Criminal Law

August. 1834.

Criminal Law.

Of Public Wrongs.

That branch of municipal Law which treats of public wrongs, is called Criminal Law. Pleas of the crown, or crown Law (4 Bl 2.)

The term, "Public wrongs," includes all crimes and misdemeanors - i.e. all offences against municipal Law (4 Bl. 1).

A crime, or misdemeanor, is an act committed, or omitted, in violation of a public law forbidding, or commanding it. 4 Bl 5.

Crimes and misdemeanors are strictly synonymous - tho' in common acceptance y^e former denote offences of the more atrocious kind, the latter, of the less heinous character. (4 Bl 5). For a crime of any kind is an infraction or violation of a public right, inherent in the whole community &c. A civil injury is an infraction of a private right.

In almost every case, a publick wrong, actually includes a civil injury. e.g. Ass^lt & Batty including a violation of both a publick and private right. Libel, murder, theft, &c Robbery, Arson. Some offences created by positive law do not. Ex:-

Public Wrongs

Smuggling &c. Libel on the memory of the deceased.

And in other cases it may include a produce such an injury, e.g. Public nuisance. And in these cases the object of the law is to give as far as possible a benefit to the injured. i.e. to the Sub: and individual. 4 Bl. 5. 6. 7.

But if the offence amount to felony; the private injury is regularly at com. Law merged in the crime, and no private redress is had. e.g. Treason. Murder. Robbery. Larceny. 4 Bl. 5. 6. 2 Roll 55 7. 1 Mod 89. 3 Coke 52. Bull 15.

The doctrine of merger has been said to be founded on the policy of the law, the object of which is to prevent offenders from escaping punishment. To prevent compounding of felonies.

But the only true and rational foundation seems to be that the punishment for the Public wrong, renders it impossible for the offender to make reparation for the civil injury it being in general a forfeiture of life and property. 4 Bl. 6. Str. 87. 2 Ld. Ray. 1572. 3 Wils. 188. 1767. arg. &c.

If a crime, not amounting to a felony, injures an individual; he has his civil remedy. e.g. Battery. Libel. Public Nuisance, &c. Riot also.

For here the punishment being less severe, leaves room for a private compensation. 4 Bl. 6.

In Comm. Law, now I believe thought to consult this doctrine of merger seems not to have been regarded. Civil suits have been sustained for Rape, Arson, Murder, &c. Goodall vs Tolcott. Ransom vs Munt. — B. Deserve, of injury

Forfeiture of property for crimes here take place in two cases only - Viz: Destroying magazines &c of U.S. in time of peace: - and Manslaughter. Statutes 182. 185-6. 285.

And in neither case is life forfeited.

The right of punishing for crimes is founded on the law of Nature; and in some instances authorized by the revealed law of God. e.g. Murder.

The right in a state of Nature was vested in every individual injured by a crime; for it must have existed somewhere otherwise there would be no execution of the law of Nature - No Sanction. 4.B.C. 7.

In a state of civil society this right resides in the Sovereign Power - And men are no longer their own Judges ~~& Sovereign~~ or avengers.

Society's right to punish is said by some to be derived from the consent of its members, expressed tacit, and therefore to be founded on compact. 4 B.C.8.

The foundation is broad enough, perhaps, to authorize most punishments, but not all; e.g. Not sufficient for capital offences. As for mala prohibita; these could not subsist in natural society. Sems as to mala in se: ~~&~~; for in this case the individuals who had a right to punish in a state of Nature; might transfer it. (4 B.C. 8. 9. - Vattell 6.1.c.13.1.169. Paley's Moral Philosophy 341. &c 2 Burlamque 142.

Consent of the criminal is in no case sufficient to authorize capital punishment. 4 B.C. 9. 2 Burlamq. 142

But the most rational ground of this right, not only in case of mala prohibita, but of all offences is expediency, or necessity. For what is expedient is consistent with the law of reason agreeable to justice. Civil society cannot exist, without ~~possessing~~ a right to punish offences agt itself.

Of Public Wrongs.

4.

For a sovereign state, though regarded as a moral person has different attributes from those of a natural person. Different rights, different duties, different nature & essence. Vatt prel 7. 8. 1 Hale 13. 4 Bl 9. 10. Pal. Mr. P. 349 &c.

The end of human punishments is the prevention of crimes. This end is to be obtained in one or more of three ways. 1st By reforming the offender. 2d By depriving him of the power of doing mischief. & 3d. By deterring others from offending. 4 Bl 11. 2 Pay. Mr. P. 434.

Of the Persons capable of committing crimes.

Regularly all persons are liable to punishment for disobedience to the laws except such as are expressly exempted. 4 Bl 20.

All the excuses which protect the perpetrator of a forbidden act from punishment, are reducible to this single consideration. Viz. the want or defect of will.

To constitute a crime there must be a will, and a forbidden act, or neglect, concurring: for actus non facit reum nisi mens sit rea. Actus in trespass or forcible wrongs considered as civil injuries. 4 Bl 20. 1. - 126 am 3.

Defect of will exists in three cases. Viz: 1st. When there is a defect of understanding. e.g. Infants under the age of discretion. They are deemed in law not capable of distinguishing between right and wrong. They are therefore not punishable by any criminal prosecution in any case. 1 Hawk 1&2. 4 Bl 22.

Persons Capable &c, — or rather punishable.

If the offence is 'an omission' infants are not generally punishable at common Law, tho' of the age of discretion e.g. not repairing roads and bridges &c (1 Hal P.C. 20. 22. — 4 Bl 22.

Facts is not imputable to infants. The offence is ascribed rather to a want of forethought and providence, than to a positive criminal disposition.

The age of Legal discretion, as the law now stands is 14 years. Under this age the presumption is in favour of the Infant. But as to all infants between 14 and 7. this presumption may, at least in capital cases, be rebutted. 1 Haw 2. 1 Hale P.C. 26.

(This distinction respecting infants under 14 if "doli capaces" is laid down by Blackstone, with respect to felonies only.) 4 Bl 23. — 1 Hal P.C. 27. Fost 72. — 1 Haw P.C. 2.

Query, not an infant under 14 be punished for breach of the Peace, riot, and common misdemeanors? It seems not according to Blackstone (4 Bl 22.3). See Query. The books are not satisfactory to me.

Idiots and Lunatics are not punishable for their acts, while under these incapacities. (4 Bl 24. 2 Inst 6. — 1 Hal P.C. 10. 29. 33. 1 Haw P.C. 2.) Secus, in case of a lunatic, if he offend in a lucid interval. (4 Bl 25. 1 Hal P.C. 31.

A person deaf and dumb from nativity, may be tried and punished for even a capital offence, if ideas can be conveyed to him by signs. † If this is the case he is supposed doli capax - capable of a guilty intention, or motive otherwise not. (Read 106. 394. — 1 Hawk P.C. 158. — 2 Hal P.C. 317. — 2 Haw P.C. 462. — 4 Bl 324)

† If proved to have sufficient understanding

Defect of Will.

If one commit a capital offence, and before arraign-ment, becomes insane, he cannot be arraigned; If after arraign-ment, he cannot be tried; If after verdict against him, no judgment† If after judgment, execution must be stayed till his understanding return. 1 Hawk P. C. Book 2. Chap 4. 6. 1 Hale 10. 34. 370. 4 Bl. 24. 395.

† can be pronounced agt him.

If it be doubtful in any of these cases whether the prisoner is "non compos mentis"; the fact must be tried by a jury. 4 Bl 25.

In these principles ~~a case~~ he who incites a madman to do an unlawful act, is himself the offender - the principal, and only offender - The maniac is but an instrument. (1 Hawk P. C. 1 Hale 517. Keb. 53. 4 Bl 25.

Voluntary intoxication is no excuse; but rather an aggravation. (Co. L. 247 a. 4 Bl 25 1 Hawk P. C. 3. 3. (8vo) 1 Hawk. 19 a. 4 Co 125 1 Hale 32.

But in case of debility of mind produced by a long course of intoxication; it is otherwise I presume. It thus becomes a disease. So, if intoxication is not voluntary, but produced by force or fraud, I presume.

2d There is a defect of will where the understanding, though sufficient, is not exercised. Here the will is neutral. The ~~man~~ actor is machine.

General Rule. If one commit an unlawful act by misfortune, or chance, he is excused. Here is a defect of will. 4 Bl 25. 1 Hawk P. C. (8vo) 1 Hale 39. Keb 123.

But if one intentionally doing an unlawful act, does

Defect of Will.

unintentional mischief; he is not excused (4 Bl 27. 1 Hale 37) He has the mens rea, and must abide the consequences of his voluntary act.

Ignorance, or mistake in point of fact, excuses. Here is a defect of will. Secus, of a mistake in law. Here the will concurs with the act. (Cro 6 538. 4 Bl 27. 3 Inst 76 Plow 343.) (Say 45. 1 Burr 35. 1 Hale 42. 3. & 4.) Ignorantia juris non excusat.

3dly There is a defect of will arising from compulsion or necessity. Here the will opposes the deed, or, at least, does not approve it. e.g. If Legislature enact an iniquitous law, commanding an act contrary to religion or morality; the subject is excused in obeying; for he acts under the obligation of civil subjection (4 Bl 21. 27. 28.

A woman covert is, in many instances, exempted from punishment, when she does an unlawful act thro' the coercion of her husband, or (which is the same thing), in his company. Ex: Theft and burglary. (10 Mod: 63. Kel 93. 1. Hale 45. 47. 4 Bl 28. (See "Husband and wife.")

The Reason of this rule is supposed by some to lie in the ancient law, relative to benefit of Clergy. 4 Bl 29. Which was never allowed to women. — But see as to this reason.

But if she commit these crimes voluntarily, or by the bare command of her Husband, & in his absence; she is not excused. (4 Bl 29. — 1 Bac 294. — 1 Hawk 71. — 1 Hawk 3

~~(as not theft and burglary, malum~~ 4 Bl 28. 4. 29. 44 c.

In case of Treason Murder, and, ~~treason~~ some say, robbery even coercion by

~~Duress per Minas~~

the Husband does not excuse. Reason = Voluntariness of the crime. (1 Hawk P.C. 1 Bac 294. 4 Bl 29. 1 Hal 47.

So, in manslaughter. (4 Bl 29. non solitis mr. 1 Hal 47. Query as to robbery. 1 Hawk 4. sec. 8.)

But it seems, that in case of husband's coercion she is thus excused in all cases of felony except murder & manslaughter. 4 Bl 29.

Neither a child, or servant, as such, is excused for any crime by the command of a Parent or master. (4 Bl 28. 9. 1 Hawk P.C. 3. Keb 34. Mod 813. 1 Hale 44.

Relation of Husband & wife is, as to only one, with respect to excuse, ~~in such cases~~ on account of the command of a superior.

Query. Another species of compulsion, making a defect of will, is 'duress per minas' i.e. threats of great bodily harm. This excuses many unlawful acts. Ex: Treasonable acts excused by compulsion of an enemy or rebels. (4 Bl 30. 1 Hale 50. 1 Hawk P.C. 5. sec.

But the last excuse holds chiefly with regard to positive offences only: as Treason. Not as to natural offences as Killing an innocent man, to escape death.

Another kind of necessity arises from legal compulsion. The will in this case is passive. Ex: An officer of the law is bound to make an arrest, or disperse riots &c. and if resistance is made, killing may be justified. 4 Bl 21. 1 Hale 53.

Stealing to relieve extreme want of food & clothing is not justified by Com: L. (4 Bl 31. 1 Hale 54.) means not justified by the end. It would lead to dangerous evasions.

Degrees of Guilt. Principals and Accessories.
One may be a principal in any offence in two degrees

Degrees of Guilt.

A principal in the first degree is he who is actor, or absolute perpetrator. In the second he who is present, aiding and abetting the actual perpetrator (4 Bl 34. Doug 197. 1 Hale 615. Hawk 97.

According to Hawkins, offenders in the last case are principals in the first degree (2 Hawk 444. 358. 326.

Quere. 2 Wms Saund 423. 1 Hal 437. 2 Wms M 537. 8. 1 Burn 262.5.

The latter were formerly considered as accessaries only. 2 Wms M 537. 1 Hal 437.

The presence necessary to make one a principal in the second degree, need not be an actual standing by, within sight or hearing. Constructive presence is sufficient. Ex: Keeping watch, or guard, at a convenient distance (4 Bl 34. East 350. Doug 197. Wms M. 539.

To aid and assist a person unknown, will make a principal in felony. (2 Hawk 291. 2 Wms M 537) And yt indictment, describing yt person, as a person unknown is not ill for that cause.

The above rules held as well to Statute felonies, as to Common Law felonies (2 Wms M. 538.

Even a constructive presence is, not always necessary to make a principal in the first degree.

Ex: Preparing poison and exposing it which is taken in offenders absence. A trap. a pitfall. Letting out a wild beast, with intention to do mischief.

Here the offender is principal in the first degree. 4 Bl 34.5. Kel 56. East 349. 3 Inst 138. 1 Hal 611. 2 Haw 443. 1 Hawk 64. 960 81.

He cannot be principal in the second degree, — for this would imply that another person, must guilty in the first degree which in such cases cannot be, — no accessory, for there would be no principal.

~~Definition~~

A special verdict, finding only that the prisoner was present is not sufficient to warrant a judgment against him. 2 Mc. & R. 527. 8 31. Hail 77. 2 Mc. & R. 535. 4 Burr 2078.

An accessory is one who is not the chief actor in the offence, nor present at its perpetration. But is in some way concerned in it before or after the fact. 4 Bl. 35.

And High Treason there can be no accessory. All concerned are principals, on account of the atrocity of the crime. Besides, the law intent to commit Treason is in some cases actual treason (4 Bl 35. 25 Ed 3 Ins. 138. 1 Hale 613. 2 Hawk 432-40- Bac. Ab. 5). 12 Co 81.2.

(Under the Constitution of the U. S. Treason is levying war agt the U. S. or adhering to their enemies, giving them aid & comfort.) Treason is not known to the law of any State since the Constitution.

Whatever then makes one an accessory in Felony, makes him a principal, in High Treason. (Formerly questions as to accessories after the fact.) 4 Bl 35. 1 Hale 58. 2 Hawk 439-40. 3 Ins 318. 12 Co 81. 2 Show 295.

Accessories may be in petit Treason, murder, & other felonies, except those which in judgment of law are unpremeditated as in Man Slaughter, in which there can be none before the fact. Petit Treason is called a Felony.

On the other hand in petit larceny, & all other crimes under the degree of Felonies, there can be no accessories. All concerned are guilty as principals. For in such minor offences minute differences in the degree of guilt do not require Legal discrimination. (4 Bl 38. 191. 1 Hale 615. 2 Hawk 441. 12 Co 132. 1 Hal 618. Co 85. Mod 55. 1 Sid 312. 12 Co 81

*2n without some overt act 4 Bla 79.

An accessory cannot be guilty of a higher crime, than the principal. Ex: If servant causes a Stranger to murder his master, or a wife her husband, the servant being absent, he is accessory to the crime of murder only. But if he had been present and assisting, he would have been as principal guilty of Petit Treason (3 Inst 36. 3 Inst 139. 1 Hawk 132. 2 Hale 445. Foster 108. 322. 2 Hawk P.C. 315.

Accessories are of two descriptions.
1st Before the fact. 2d & After the fact.

An accessory before the fact, is one, who procures, counsels, & commands another to commit a felony; being himself absent at the time of the act. Absence is necessary. Otherwise he is principal. 1 Hal. P.C. 615. 616. 3 Inst 36. 2 Hawk 445. Plow 475.

He who abets another to an unlawful act, is guilty as accessory, of all that ensues upon that act, but not of any thing substantially distinct from it, and not directly ensuing upon it. Ex: A commands B to beat C, & beats him till he dies; A is guilty of the murder, as accessory. So if A commands B to poison C, & shoots or stabs him, A is accessory. Killing C. is the substance of the crime abetted. The manner is but circumstance. × as it necessary in natural course of it.

But if A. commands B. to burn C.'s house, and B in doing it rob the house; A. is not an accessory to the robbery. 2 Mc. 1537. 1 Hal. P.C. 617. 2 Hawk 446. Plow 475. Foster 370. The act done is substantially different from that commanded.

To solicit one to commit a felony, or, it seems, any other offence; is a misdemeanor, though the crime be not committed.

Of Public Justice.

12.

~~Felonies~~ . . .

2 East 5. 6 Mod. 91. 2 Show. Parl. Cas. 1377. 8 Ea. 581.
Tendency & ingredients. Principle punishable.

If the abettor retracts, before the act is done, he is not accessary, it seems. (2 Hawk. 320. Sec. 3 Inst. 51.) The act, if done, is not void, in respect to the principal. — Mary Q. of Scots case.

Stat: felonies, as well as those at Com. Law admit of accessaries though the Statute is silent as to them: For former having the incidents of Common Law felonies. 2 Leach 564. 1 Hawk. 57. 1 Hal. 537. East 350. Hawk. 475.

The law concealing of an intended felony is only a misprision of felony. Which is punished only with fine and imprisonment. (2 Hawk. 447. Mod. 8. 3 Inst. 139. 142. 4 Bl. 124.
Misprision: What? (4 Bl. 119. 3 Inst. 36. 1 Hal. 127.) 1. Crim. omissa.
2. & misdemeanor of the highest kind.

Persons who are accidentally present when a felony is committed, and do, not endeavour to prevent it, and abet the felon, are guilty of a misdemeanour — fined & imprisoned. Except in favour of Infants. (2 Hawk. 442. Mar. 57. 2 Hawk. 185.)
So them, no laches is imputed.

2d sort. Accessory after the fact is one, who receives, relieves, comforts, or assists a felon, knowing him to be such. 4 Bl. 37. 1 Hal. 618. 620. 2 Hawk. 446 &c. 204. 188.

But the assistance given, must be with an intention to hinder public justice: As to prevent the felon from being apprehended, tried, or punished. 4 Bl. 38. Ex: Harboring a concealing — furnishing with a horse, to escape — Receiving —

Felonies.

assisting in an escape from jail by instruments or bribing the jailer &c. Keil 45.

So, relieving a felon in jail of what necessaries, is no offence. 1 Bl 28.

So of any of the common offices of humanity or charity.

Buying & receiving stolen goods, knowing them &c, made no accessory at Common Law. Be off, once, was a misdemeanor. Laws, in Engl. now by statutes 5 Wm & 1 Geo II &c 1 Val 620. 1 Bl 38. 2 Hawk 456. 6 to Eliz 888. Cole 1.5. Keil 65.

(By ma Stat the receiver is made a principal. Stat 416)

Felony must be complete at the time of the assistance to make one an accessory after the fact. Ex: Case of mortal wound. Assistance given before death. 1 Bl 28. 2 Hawk 451 sec. 1 Val 219. 622.

A wife is excused for assisting her husband (not before) though a felon. Coercion presumed. But no other relation excuses. As Parent and Child — Master & Servant &c 4 Bl 31. 2 Hawk 451 — 1 Hale 621. 3 Inst 108.

One even the husband is not excused in assisting his wife, a felon.

If one is indicted as accessory to her principal, proof that he was accessory to one, is sufficient. 4 Co 119. 2 Wms 4. 540. 542.

Gen rule of Com: Law that accessories suffer the same punishment as principals. 3 Johns 188.

Felonies — Accessories.

But accessories after the fact, are now, by Eng. Statt, allowed the benefit of clergy, in most cases when the principal & accessories before the fact, are not.

Formerly held, that accessory could not be compelled to answer till the principal was attainted: Contra, now holden. (4 Bl. 323.

But he cannot now, except by statt, be tried (unless he desire it), till the principal is attainted: Or, unless the principal is tried at the same time. 2 Hau 453. 5. & 12 Ed 40. 323. Leach 18.

But by statt 1st Hen. 8 & 32d & 33d Geo 3d The accessory may be tried, in certain cases, though the principal has not been attainted, or even tried. (Leach 107.) i.e. as for a misdemeanor only. (Leach 353.

If the principal is acquitted, the accessory is discharged. (2 Hau 432. 1 Hal 629. 4 Co 43.) For he cannot be found guilty.

And if the attainder of the principal is reversed, that of the accessory is ipso facto reversed. (2 Hau 432. 1 Roll 877. 4 Co 119.

Secus, while the first attainder is unreversed tho erroneous (2 Hau 432.

But the death, or pardon, of the principal after attainder does not, even at Com. L. avail the accessory (4 Co: Eliz 541. 4 Co 43. Ray 477. By 12 Co 109 it does not affect y^e qu. of guilt.

Bn neither event proves the attainder unjust or illegal.

But at C.L. the death &c. of principal before attainder, though after conviction, discharges the accessory. (2 Hau 434. 4 Bl 329) since y^e prima cannot be attainted.†

Secus now by Statt 1 Ann ante. (Leach 107)

† Hence there can be no accessory out of his guilt.

Accessories

If one is acquitted as accessory before a after the fact, he may afterwards be indicted as principal.

But if acquitted as principal, it is doubted whether he can afterwards be indicted as accessory before the fact, tho' as accessory after the fact, he may be. (4 Bl 40. 1 Hal 625. 2 Post 361. 2 Hawk 399.)

Is there any sufficient objection to the same course in the first case? Or, proof that the prisoner is guilty as accessory, will not support an indictment against him as principal. (2 Wms N 496.

The indictment against one as accessory, need not state, that the principal committed the offence. Sufficient to state, that principal was convicted &c, & how to charge the prisoner as accessory. (2 H. 465. 1 Hal 625. 2 Hawk 464. Post 365.

Not the accessory on his trial, though it be after the conviction of the principal, may controvert the latter's guilt either in point of fact or of law. (2 Hawk 465. 4 Bl 324. Post 121. 2 Wms N 466. 9 Co 118.

For the conviction is res inter alios &c — So he may when both are tried together. 2. Hawk 463.4.

Of Felony

Felony is any offence which occasions, at Com. Law, a total forfeiture of goods, or lands, or both. (4 Bl 94.5.

The term is ~~general~~, i. e. not designating one specific violation of the law, but a whole class of offences.

Felony.

Secus of murder, manslaughter &c.

The word did not originally denote any crime, but the penal consequences of certain crimes. Synonymous with a forfeiture of fee a feud. Afterwards used to signify the offence, making the forfeiture; and, by an easy deflexion to denote offences making a forfeiture of goods only. 4 Bl 95.

Treason is strictly a felony, causing a forfeiture (was anciently) comprised under that name. Now class, of itself, as a crime standing alone by gen. usage. 4 Bl 98. 7 Hen 99. 3 Ins 15. 4 Bl 94-5.

Capital punishment is not, necessarily, a consequence of felony (though almost always superadded). Ex: Self murder, Homicide by chance medley, & Petit Larceny. (4 Bl 29) 2 Bac 476. M'N 208. 2 Mile 191.

So, e contra, some capital offences are not felony. Ex: Standing mute at C. L. standing mute, when arraigned on an indictment. (1 Hen 99. 4 Bl 95. 3 Ins 13.) No forfeiture.

All felonies, which are punishable with death, work a forfeiture of all lands in fee simple, & of goods & chattels. Others, not so punishable — of goods & chattels only (4 Bl 97. Cro L. 391). For in ye latter case, there is no attainder, without wh, no forfeiture of ye inheritance.

But, by general usage, the new felony is now made to import a capital crime.

And indeed to include all capital crimes below Treason. 4 Bl 98.

Felony.

Hence, if a Statute creates a new felony, the law implies, that it shall be punished with death, as well as forfeiture. So, contra, if the stat. annex expressly capital punishment to any (crime) offence; that offence is, by consequence, a felony. 4 Bl 98. 1 Hawk 168. 1 Hal 352. 703. 6 Co 38 91. 2 Bac 407.

But if a stat. prohibit an act, under pain of forfeiting all he has; it is only a misdemeanor. (4 Bac 644 6 Co 38 91. Hob 270. 1 Hawk 107 fol 168 sec):
No offence being made felony, by doubtful & ambiguous words.

Crimes, which in Eng. cause forfeiture, are in Germ: called felonies; though no forfeiture ensues here (except in one case I believe — manslaughter.) St 835. vide St 182–185. Ref'd St 755.

Clergyable felonies, are those, in which the benefit of clergy is allowed. This is a kind of pardon, in effect, exempting felons though convicted, from the punishment of death. 4 Bl 367. 2 Hawk 336. 1 Mc A 213.

But their goods are forfeited by conviction, & not restored. (4 Bl 367. 3. 387.) Its origin 4 Bl 365 &c — Lands not forfeited.

At Com: L. it was allowed in Petit Treason, and in most capital offences, but not in all. Not in High Treason; Petit larceny, ~~& such~~ or mere misdemeanors. (4 Bl 351. 2 Hawk 337.) for same reason.

+ but it is not capital

Its allowance in most capital cases sanctioned by stat 23 Ea. 3. (4 Bl 374) & extended to Petit Treason.

~~Not~~ allowed in High Treason, nor in Petit Larceny, nor for misdemeanors — & not in cases, not capital.

Felony.

Originally it was allowed only to clerks in orders, or the clergy, afterwards to every man who could read — this being evidence of his being a clerk. 2 Hale 373. 2 Hawk 434. 4 Bl 365.

But not to women, being excluded by sex from the clerical office 4 Bl 367.

Now by divers English statutes especially 5 & 6 E. 6. c. 4. 1 & 2 Ph. & M. c. 13 & 4 Anne c. 16 the privilege is extended (in case of clergyable offences) to all persons whatever, readers or not. 4 Bl 367. 370.

But common persons taking the benefit of clergy, are by Stat 4 Geo 1, burnt in the hand, or whipped, or fined or put to some other infamia punishment. 1 Hawk 214. 216. &c 4 Bl 375.

But clerks, Peers, & Peeresses are not burnt &c. 4 Bl 374. 1 Hawk 217. Post 336. by stat 1 Ed 6.

And lay persons are entitled to it but once — Clerks as often as they commit clergyable offences. 4 Bl 373. 2 Hal 375. 1 Hawk 214. St. 4 Geo 1. 1 Ed 6.

By its allowance for any particular felony the offender is discharged forever, not only of that, but of all clergyable felonies before committed. 4 Bl 374. 1 Hawk 217.

At present in Engd Clergy is allowable in all felonies, whether by Stat: or Comn Law, unless expressly taken away by act of Parliament. 4 Bl 373. 2 Hal 330.

Benefit of Clergy formerly pleaded in Engd (declaratory plea); now prayed for before judgment — after conviction usually (4 Bl 332. 2 Hal 335.)
(No clergy in Comn.)

Of Homicide.

Homicide is killing any human creature. 4 Bl 177. 1 Hawk 100. 3 Bac 41.

Of homicide, there are three kinds: justifiable, excusable, & felonious. 1 Hawk 104.

Homicide is therefore not necessarily criminal. The first kind has no guilt, the second very little, even in judgment of law, & only a nominal punishment. 4 Bl 171. East P.C. 1 Hawk 439.

II^dly Justifiable: This is of several kinds.
First. Homicide is justifiable when occasioned by necessity.
Ex:- Sheriff in the execution of his official duties executes a condemned malefactor. 4 Bl 178. 1 Hawk 105. - legal necessity.

But in this case the law must require the act to be done, and it must be done by the person required by Law to do it - or by his deputy. For, if a private person voluntarily & wantonly kill a person attainted, &c it is murder. 4 Bl 178. 1 Hale 499. 501. 3 Bac 674. 1 Hawk 105.

The officer himself in executing a sentence of death, must pronounce the sentence. Seems, guilty of murder. Or pleading for hanging, & vice versa, &c 4 Bl 179. 3 Bac 674. 2 McN 559. 1 Hawk 106. Co 2 Inst. 1 Hale 501.

The sentence must be by act of competent jurisdiction. Ex. 31 G.R. in Eng & or Com. P. in Com: give sentence of death or

Justifiable Homicide.

a prosecution for a crime, of which they have not cognizance, & it is executed, the officers who execute it, and the Judges are guilty of murder. 4 Bl 178. 4. 3 Bac 671. 10 Co, 76. 1 Hawk 105. 150. 1 Hale 497. 500. 500. 106. Cro Car 98

But if the court has cognizance of the offence, & pass sentence of death, when the offence does not subject to it, the officer is not guilty — being bound to obey the order of the Law. It is not coram non judice.

III d Justifiable in certain cases when committed for the advancement of public justice. Ex: An officer in making arrests is resisted and kills dispersing riots (and this last holds of private persons) 1 Hawk 109. Kel 70.

How justified by the permissions of Law rather than the command. (1 Bl 179. Foot 86. 2 McN 559. 570. 1 Hal 494. 1 Hawk 105.)

So, if an actual felon resists or flies from his pursuers, even private persons, without warrant may (for this cause) kill him (1 Hale 106. East 2 71.); if he cannot be taken alive.

So, if an innocent person indicted for felony, resist the officer having a warrant ag[t] him, may take his life, if he cannot be taken alive

Secus, if a private person, without authority, attempt to arrest an innocent person, on suspicion — Post 318 — 2 McN 572.) he acts at his peril.

Justifiable, when an officer, attempting to make a lawful arrest, in a civil case, is resisted, & that debt cannot be apprehended alive. (1 Roll 189 — 1 Hawk 107 — 3 Inst 56 —

Justifiable Homicide

So in other cases to prevent an escape or rescue.
(1 Hale 494 Post 293.
and Sheriff is justified in killing the rescuer

III. Justifiable, to prevent any forcible and atrocious crime. Ex: One attempting to murder, or ravish, is killed by the latter. So while breaking a house in the night. Even of crimes, not accompanied by force. As picking pockets breaking house in the day; also. (4 Bl 180 3 Inst 57 1 Hawk 108. 1 Hale 485. 493 4 Bac 137 Post 270. 275 & 277.

Not justifiable when merely to defend his house, goods, or person from a bare trespass (4 Bl 180. 1 Post 273 Inst 57 & 58. 1 Hawk 108 1 Hale 485

But if the trespass is against his person, it may be resisted, & defended. (post 4 Bl 185 1 Hawk 112

If the trespass is as to property only, it is manslaughter, so, if he kill the breaking his windows against him as in mill cases (1 Hawk 108 Why it not be homicide to defend in the first case? i.e. If he cannot otherwise escape death or enormous bodily harm 4 Bl 185

The general principle is: Where a crime, itself capital, is attempted with force, the force may be lawfully resisted by the death of the party. Where the homicide is justifiable. (4 Bl 181 & 277

A woman may lawfully kill one, who attempts with force to violate her chastity. (4 Bl 181 (1 Hawk 108. Post 274)
So a husband, or parent, may kill a ravisher (1 Hawk 108. 4 Bl 181 1 Hale 488) May not a stranger? It being to prevent a forcible & atrocious crime (1 Hawk 109. 3 Inst 138.

Justifiable Homicide.

~~In killing any other person to suppress a Riot or to~~ ~~Riot.~~

According to the old opinions, justification of homicide may be specially pleaded. Later opinions are that it must be given in evidence, under the gen. issue. (1 Hawk 105. 3 Bac 675. 1 Hale 478.
(Always agreed that an excuse can be pleaded (1 Hawk 105.)

Special plea in Bar would amount to gen. issue.

Justifiable Homicide is not punishable at all - not even nominally. (4 Bl 182.

III^dly Excusable Homicide.

The difference between Justifiable & Excusable is the first is lawful; the other, venial. (4 Bl 182.

Excusable is of two kinds. I^st Per infortunium, by Misadventure. II^dly Se defendo, in self defence. (4 Bl 183. 1 Hale 38. 4 St 393.

The first purely involuntary. The second voluntary, but committed from motives & circumstances constituting an excuse. (3 Bac 676. 1 Hale 471.

I^st By misadventure: happens when one doing a lawful act, without any design to hurt, involuntarily kills another. Lawfulness of the act is essential. Ex: using an axe, & head flies off.)

Excusable Homicide

So, third person who's a case, which kills another; the rider is guilty of Homicide by misadventure; & the whipper of manslaughter at least. 1 Haw 111. 1 Hal 472. Post 258. 4 Bl 182. 3 Bac 476. 4 Bl 183. Qu. why is & rider guilty at all?

So, of an officer capitally punishing a convicted criminal excusable. If the beating is outrageous it will, manslaughter, at least. If with an instrument apparently endangering life, murder. (1 Haw 111. Keil 64. 5. 133. Post 262. 1 Hal 455. 474. 2 McN 550.

But if death accidentally ensue, in consequence of an unlawful act, which is malum in se; the author is guilty of manslaughter at least. In some cases of murder. (2 McN 553.4.

Distinction: if the act is trespass only; it is manslaughter: If Felony; his murder. (2 Bac 676.). 1 Haw 112. Hob 134. 4 Bl 183. 192.3. 4 Co 499.

If one accidentally kill another, in the execution of a malicious & deliberate purpose to do him personal hurt; it is murder. (4 Bl 200. 1 Haw 112. 1 Hal 39. 475.

So if it be in consequence of any unlawful act, which naturally tended to bloodshed (4 Bl 193. 1 Haw 112. Keil 113.4.

So, if one do an idle act, which must manifestly endanger the person of some one; & accidentally kill; it is manslaughter. Ex: Throwing stones at another in sport: This being an unlawful act. (1 Haw 112. Str 481. Post 261. 4 Bl 183.

Excusable Homicide.

But if death accidentally happen, in consequence of any lawful sport, as foot ball, wrestling &c; it is by misadventure only. 1 Hawk 112. Post 260. 2 Mc. N. 254.

III^d In self defence: this take place, when one, in a sudden affray, kills his assailant, in his own defence. (4 Bl 183. 3 Bac 677). This is excusable: the fault of the aggressor.

(Distinct from that which is committed to prevent the perpetration of a capital crime.)

Shall not be material, who give the first blow, if he who kill, in self defence, is forced to fight. (3 Ba 677.)

Quere. - p 3. Not law it seems.

But to excuse this kind of homicide (~~is~~ when voluntary), it must appear to have been the only possible (or at least probable), means of preserving one's own life. (4 Bl 184. 5. 3 Ba 677. 2 Mc. N. 503. Post 273);

Or at least of escaping great bodily harm (1 Hawk 108. 113. 4 Bl 185.

When it is to preserve one's life, it seems nearly akin to justifiable homicide committed to prevent a forcible & atrocious crime. 4 Bl 182

(Difficult often to distinguish this from manslaughter. Test Rule: If both are fighting (i.e. striving for victory) when the mortal blow is given; it is manslaughter.

But if the player have not begun to fight, or having begun, try to decline, & cannot without danger to his own life, or great bodily harm; it is to be excused.

(3 Inst 56. 4 Bl 184. Post 277. 3 Bac 677. 1 Hale 481.

Excusable Homicide.

According to some, the aggressor himself when pressed (at supra) and trying to escape is excusable in killing, to save his own life. (3 Bac 677) =

= Non holden contra, it seems for it is his fault. (1 Hawk 113. 1 Bac 479. 482. Kel. 58. East P.C. 295-78. 4 Bl 185.)

And if one strike with malice prepense, & having fled, & tried to decline, kill the other even to save his own life, it is murder. (1 Hawk 113. Kel. 58-128.)

If two agree beforehand to fight a duel, & one being pressed (at supra) kill the other; he is not excused it is murder - there being previous malice. (3 Bac 377. Kel 129.81. 4 Bl ~~[illegible]~~ 185. 1 Hawk 122.3.4. 112.

Same rule applies to fighting in general by a preconcerted agreement; where it is not all one sudden combat & provocation. (1 Hawk 120. 112. 122. Kel 117 1 Hale 34. 47.5 to it seems.

So, the seconds of him who kills in a duel, are murderers; & according to some the seconds of the other (1 Hale 179. 1 Hawk 124. 1 Russ & M. 1 Bac 443.); there being, on both sides, a deliberate intent to kill, or assist in killing.

This excuse of Self defence extends to the chief civil and natural relations. &c: & Husb & Wife. (Kel 1.33.) Parent and Child. Master &c not of the relation is construed the act of the party attacked. (1 Bl 184. 1 Hawk 80. 3 Bac Ab 558. 578.); &c; to prevent grand bodily harm. (supra)

& Stranger may justify homicide in defence of another, only to prevent a forcible capital crime. ~~[illegible]~~. (Kel 61. 1 Hawk 125.

Excusable Homicide.

Killing an officer who attempts to arrest or detain, in the execution of his office, is not excusable; it is murder, by the warranty is irregular & illegal, if good on the face of it. (2 Hale 428. 9. 451. 2 Ld. Raym 1035)

No one can excuse the killing of another, by pleading misadventure, or self defence. It must appear in evidence under the general issue. (3 Bac 676. 1 Hawk 74. 1 Chan 115. 2 Ld. R. 940. 6 Co 54 a. (Mason).

Punishment:- Excusable Homicide whether by misadventure or se defendo, is said by Co. to have been anciently punished by death. (3 Inst 56. 315.); venice by later writers (4 Bl 188. 1 Hawk 435. Post 3 824 c.

The punishment seems to have consisted anciently of a total or partial forfeiture of goods & chattels. (4 Bl 188. 1 Hawk 115. Total the offence would be felony, which Blackstone says it is. 4 Bl 95.) 1 Hawk 114. Hen & 2 do 44.)

It seems to be, strictly, by the ancient law at least, a felony; but is, not now classed with felonious Homicide, because not Capital. Felony being now used as synonymous with a Capital crime. 4 Bl 98.

But as far back as English records reach, the party has ever been, as he still is, entitled of course, & of right, to pardon & restitution of goods. 1 Hawk 115.)=

=So that the punishment is at most but nominal. 4 Bl 188. Post 283. 2 Hawk 538.

Indeed the English Judges usually direct, or permit

Excusable Homicide
a general verdict of acquittal. 4 Bl 188. Post 188.

There are no accessories in excusable homicide, because not felonious. 2 Hawk 447. 1 Hale 475. 16.

IIIdly Felonious Homicide.

This is the killing of a human creature without justification or excuse & may be committed by killing either one's self, or another. (4 Bl 188. 1 Haw 102.

IIdly Homicide by killing one's self is called felo de se murder. the party felo de se. (1 Haw 102 &c.)

Felo de se is one who deliberately puts an end to his own existence, or commits any unlawful, malicious act, the consequence of which is his own death. (4 Bl 189. 1 Hal 412. 1 Haw 102.

Ex: One attempting to kill another, the gun bursts, & kills himself. (Ibid. 3 Inst 54.

If one requests another to kill him, & it is done, the former is not felo de se, but the latter is a murderer. Assent, or request, merely void. (1 Haw 103. Mr 7 54.

Quere. Whether correct on principle?

A person to be a felo de se must be of years of discretion, and compos mentis, as in other felonies. Not Infants under 7. Lunatics &c. (4 Bl 189. 1 Hal 412. 3 Inst 54. 1 Haw 102.

Felonious Homicide.

It admits of accessories before the fact - not after. Ex: one person persuades another to this crime; he is guilty of murder (4 Bl 189), as accessory before ye fact.

The consequences of Com Law are ignominious burial, viz the highway. (impaled) Forfeiture of all goods & chattels. Escheat of his lands, being no attainder. 4 Bl 190. 3 P. 136 am 103. 2 62. Say. 2 Eng 524.

These indignities have in most cases been abolished by Stat. (1823.)
In this country never carried into effect & believe.

The second kind of felonious homicide consists in killing another person without justification or excuse; & is either with, or without, malice. 136 am 115. Fost 62 5. 4 Bl 190.

Hence two kinds: Manslaughter & Murder.
One without malice, the other with. 136 am 115. 4 Bl. 190. 1 Bal 485. Malice in law is any unlawful or wicked motive (4 Bl. 95. Am "Evil design" Fost 256.

First: of Manslaughter. It is the unlawful killing of another without malice express or implied. 1 Bal 485 4 Bl 191. 8 P.

And is either voluntary or involuntary.

No accessories before the fact, (at ante) being unpremeditated. 4 Bl 191. 1 Ham 115

As to Voluntary:

If two persons meet a sudden quarrel ensues, & one kills the other, it is manslaughter;
So, if they immediately go out to fight - for it is one continued act of passion. 4 Bl. 91. Fost 290. 1 Lea. 51. 55. 2 Ala. 502. 3 P.

Different from the case of dueling to previous

Felonious Homicide.

agreement - If one is deliberately intent to kill - ~~[illegible]~~ ergo malice - & so - murder.

(So it seems of preconcerted agreements to fight generally) 1 Hawk 112. 122. 4 Mod 56. 191.

If a person, attempting to part others who are fighting, or a sudden affray, is killed; the offence is murder - provided the slayer knew, or had notice, that the object was to part them. - Else, Manslaughter. (Foster 60.). 114.8. 1 Hawk 12). 8. East 2 P.C. 2). 2. 9 Geo 81. 2 McN 561.

If one, ~~is~~ greatly provoked by another's misdemeanor, as pulling his nose, or other great indignity, immediately kill him; it is manslaughter, generally. 4 Bl 191. Foster 130. b. 1 Hawk 125. 11). ex.

Secus, if there was sufficient time for passion to subside - it is murder. 4 Bl. 191. East 2 P.C. 316.

same distinction in every case of homicide upon provocation. Foster 27. 50. 2 McN 5). 1 Mod 486. Ray 2. 2. 1 Vin 151.

So, if upon a sudden provocation, one executes his revenge, immediately, but in such a manner, as manifests a deliberate intent to kill, or, do other great bodily harm, (death ensue - even accidentally) - it is murder.

Ex: Tying a boy to a horse, tail &c. mischief keeper of Park formed him in mischief 2 Ld Raym 1304 S. 1 Hawk 126. Go 6, 31. Palm 545. Foster 12). 1 Hale 456. 4). 4 East 292. 4 Bl. 198.

Or a parent (~~correcting~~) chastising a child in an outrageous manner &c.

If a husband take a man in the act of adultery with his wife, & kill him instantly; it is manslaughter in the lowest degree (4 Bl. 191. 1 Mod 486. Ray 212. 1 Hawk 125. 1 Vent 158.

Bare words or gestures - (reaking) immediately upon ~~[illegible]~~ on land - are never a sufficient provocation, to reduce even a sudden killing to Manslaughter; where the killing

Felonious Homicide.

Murder, or the name of (beating) maliciously unlawfully before 1 Hawk 124. Ante 1.30 Hale 455. 473. to 5.77. Kay 1. Post 2 70. 310. 534.

Seems, if it appear clearly from the manner of beating that he intended only to chastize; & that the killing was unintentional; 1 Hawk 124. S. 4. Bl 210. 2. Hg. 1. 384. Dr manslaughter.

If in an affray between A & B, the friends of A. previously interposed, & kill B. - he is guilty of manslaughter only - no malice prepense. (Foster 132. 6. 2 Co 3. Salk 2. 5.

(Query - if not the rule to be general? (1 Hawk 125.) as if he intended when he struck but the non-outrage?)

Manslaughter on a sudden provocation differs from Homicide se defendo, in this - In the latter case there is an apparent necessity for self preservation - In the former none - the act of sudden revenge. 4 Bl 184. 192

& So Involuntary: -

This, as the term imports, is always unintentional; but causing it in some unlawful act - malum in se (4 Bl. 192. 196 an 111. Hg. Dict 253. 254. 2. Hawk. 568.

(Differs from homicide by misadventure in this: the latter ensues when a lawful act. 4 Bl 192. Com 580.

If death ensue when an act, which is mala prohibitum, the rule is the same, as if the act was lawful. (Post 259. 1 Hawk 478. 2 Mod 308)
i.e. the homicide by misadventure.

If one accidentally kill another, while engaged in any cause, civil & dangerous, (as by correction, &c

Felonious Homicide.

it is Manslaughter. Dice are unlawful sports (+ 2 Ric 3. 3 Jas 1. 33 H 8 c 9. 2 Sat 207. 292. 186 a 12.

So, if an act is itself lawful, is done in an unlawful manner - for here under its circumstances, the act is unlawful. Eg: Throwing down a piece of timber, or a stone into the street in a city, though the party give warning. (Keil 50. 51.) Eg shooting a gun where he is usually resort (+ 2 C 172. 2 Ra 112. 1 Ve ab 172. 3 S. 1 Hy. 1. 580. 7. 8.

If the unlawful act is trespass only; the killing is manslr. If felony, it is murder. (at ante.). + 2 C 192. 186 a 120. 9 Co 81 a Plow 467.

Punishment: 24 clergyable offence - ergo not capital, in England, in the first instance.

But the offender forfeits all his goods & chattels, & is burned in the hand. Not his land because not capital. (+ 2 C 193. 2 H. 3 8) and therefore, no attainder.

~~No attainder~~. No crime inflicts cruelty, unless there is sentence of death. i.e. attainder.

But it is punished by stat (when voluntary) with forfeiture of goods & chattels to the State. Burning, Branding - & disability to give verdict or evidence.

In this country, only, ye punishmt is now, state-prison, or penitentiary.

Involuntary &c is not within our stat: (St 28 +) What at Com Law is involuntary manslaughter is in Connecticut but a misdemeanor.

Decided at New Haven July 1800. State vs Rogers.

But voluntary may still be punished here as at Common Law.

Of Murder.

This name was formerly applied to the secret killing of another; [for which the Civil or if to prove the hundred was amerced] 4 Bl 194. 1 Hawk 113. Hale 120. 4. 1 Hal 447. Ent 284.

Murder is now described thus: Where a person of sound memory & discretion unlawfully kills any reasonable creature in being & under the Queen's peace; with malice aforethought express or implied. 3 Inst. 47. 4 Bl 195. 1 Hawk 218.

It is: The unlawful killing of another with malice prepense.

Difference between this & voluntary manslaughter: The latter proceeds from sudden passion, the former from wickedness & malice. 4 Bl 195.

Of Sound Memory &c: So must every offender be, to be punishable 4 Bl 20. 25.

"Unlawfully kills another" &c: The unlawfulness ~~arising~~ is from ~~killing without~~ warrant or excuse. Must be actual killing. Assault with intent to kill is a misdemeanor only: though formerly murder. 4 Bl 196. 1 Hale 435. 6. 3 Inst 54.

Not only directly & forcibly taking away life is a "killing" (as by a blow &c etc) within the definition: But if any act of which the natural consequence is death, & which eventually occasions death + and if wilful, & deliberate it is murder.

+ is a killing,

Ex: poisoning - Starving &c. 4 Bl 196. 1 Hawk 113. 3 Bac. 662. Palm 548. Leach 141.

Modes of killing indefinitely various.

Murder.

So, of a son who carries out his sick father, against his will, in a cold frosty season.

So, of the woman who left her child in the field covered with leaves only, & it was stricken by a kite. 1 Hale 431. 1 Haw 115. 132. 13.

~~Vide i. killing & murder.~~

So bawd & officers who shifted a child about till it died. 1 Hal 433. Lease 1st.

So, a Jailer knowing a prisoner to have an infectious disease, wantonly confines him with another, who he dies. 1 Haw c. 13. Star 333. Trem 835.

So, if he wantonly confine a prisoner in a Low unwholesome room, denying common conveniences. 1 Haw c. 13. s. 8 & 4. & 12 Ray 503.

So, the owner of ~~a man~~ a beast used to do violent mischief, suffer it to go abroad; or turn it loose when to frighten people, & it kill; the owner is guilty of the killing. Viz. in the first case, of manslaughter; in the second, of murder. (1 Hal 197. Palm 431. 1 Hal 456. 617. 3 Bac 663.

IIIdly. So, in some cases where the actual killing is by another. Ex: If one incites a madman to kill another: Or lays poison for A, and B. take it. 1 Haw 118. 3 Inst 47 4, 3 Co 61) (Or by duress of imprisonment compels another to accuse an innocent person; who is condemned to death on the latter's evidence. St 1 Ed 3.) 1 Haw 3. 118. 3 Inst 91. 1 Hale 431. 442. 617. 3 Bac 883.

(Whether bearing false witness with intent to take away one's life is such a killing as to amount to a Com L; provided the innocent person is condemned and

Murder.

executed — Quere. (Leach 441. Post 132)

It was by the ancient C. Law. No instance has occured for many years. 4 Bl 196. Post 131. 1 Hawk 119. n. 3 Ins 48.

In Conn. by Stat., bearing false witness wilfully, and on purpose to take away any man's life, is punished with death. St 1731.

If a Physician &c gives a potion &c, to cure, but which kills; 'tis homicide by misadventure only.

But it has been holden that if the person be not a regular Physician &c; it is, at least, manslaughter. Vid Quere. 4 Bl 197. 4 Ins 251. 1 Mac 430. 3 Bac 54. 1 Hawk 81 (~~Every man may prosecute himself nisi and act innocently~~)

But no person can be adjudged to have killed another, in case, unless the death happens within a year & a day, &c. In computing which time the whole day on which &c is to be reckoned the first. 1 Bl 119. 3 Bac 56.

But, if he dies within that time, 'tis no excuse that he might have recovered, if he had not neglected &c 1 Hawk 119. 2 Ins 53. Keb 56. 1 Hal 19. 1 Hale 428.

But if the wound or hurt be not mortal, & the party is killed by the remedies used, & not by the wound &c; it is not homicide. But this must appear clearly. 3 Bac 665. 1 Hal 428.

A person indicted for one species or mode of killing, cannot be convicted by ~~proof of homicide~~ evidence of a totally different species. Ex: Poisoning for shooting. Starving for drowning &c. Quere, when they differ only in circumstance. Ex: Wound given with an axe, club &c but alleged to have been given with a stone. 4 Bl 196. 2 Ins 319. 2 Hale 185. 2 McN. 220. 222. 2 Hale 291. 90. 6.

Murder.

But, if several are indicted together, A. as giving the blow & B as present aiding &c; evidence that B gave the blow & that A was present aiding &c, will maintain the indictment. 1 Hal 437. 8. 2 Hal 292. 9 Co 67. 112. 7 Co 42b. 1 Plow 98. 2 McN 522. 5. 539. &c. For both are guilty, as principals, the difference is only in circumstance.

The indictment must state that the prisoner gave the deceased a mortal wound or bruise. (Leach 98). i. e. s'd purpose, where the means employed were violent, as stabbing, striking, &c. Seus of poisoning, starving, &c; ~~[illegible]~~.

The words " A reasonable creature, in being and under the peace &c"; include aliens and outlaws. Killing any person whatever, except an alien enemy in time of war, with malice prepense, is murder. 4 Bl 197. 8. 3 Ins 50. 1 Hale 433. 3 Bac 655. 1 Haw 121. All others are "under the peace."

Killing a child in ventre sa mere, is a great misprision only; not in rerum natura, for this purpose. (3 Bac 655. 4 Bl 198. 1 Haw 121.)

Misprision is a high offence, under the degree of capital, but bordering upon it. (4 Bl 119. Hel 71. 1 Hale 374. 1 Haw 88.

But if the child be born alive, & afterwards dies within a year & a day, of the wound &c rec'd in ventre sa mere; it is murder by the better opinion. (4 Bl 198. 1 Haw 121. 3 Inst 50. 1 Hal 433 &c.

But the death must be within a year and a day. 4 Bl 197.

The epithet "reasonable" in the definition means "human", not, "having the faculty of reason." — Madmen, Idiots &c are within the definition. Inciting of a madman

Murder.

to kill himself, is guilty of murder. (1 Hawk. 118. 1 Hale 431, 480.) Guilty as principal.

If one counsels another to kill a child in ventre sa mere, & being born, it is killed in pursuance of such counsel, he is accessary to murder. 1 Hawk. 121. By 1 Jac. 1. Ch. 8. (1 Hale 429. 433.

By 21 Stat. 21 Jac. 1. and by the late Stat. law of Connecticut, if the mother of a bastard child, found dead, endeavour to conceal its death, by burying it, privately, or in any other way, she is deemed guilty of murder, unless she can prove, by one witness at least, that it was born dead. (1 Hawk. 122. 3 Inst. 50. 1 Bl. 6. 82. 2 Mc. N. 58.)

Now, the former Stat. of Connect. is repealed: Punishment under new Statute sitting on gallows &c; binding to good behaviour; and imprisonment at discretion of the Court.

The construction practically given to these Statutes in Eng. makes necessary to the mother's conviction, presumptive evidence at least, that the child was born alive. (1 Russ. 788. 2 Ld. Raym. 1314. Hob. 32. 3 Haw. 609. 2 Mc. N. 582.

"With malice aforethought, express or implied" - is the grand criterion. It is not necessarily hate or malevolence to the deceased - but any evil design in general; the dictate of a wicked, depraved, malignant, mind. (2 Mc. 1 5 & 8. 4 Bac. 98. 9. Stat 265. 2 Bol R. 1 Roll. Rep. 120.).

"The Court, not the jury, are judges of the malice". (Ld Ray 1498. 2 Str. 773. 4 Bur. 2398. 2474. 2527. 3 D & E 412.) - i.e. of what amounts in law to malice; as that the facts being given, the point is a question of Law (2 Mc. N. 547 &c).

Malice prepense, may be either express or implied. Said to be express,

Murder.

1st When one with a deliberate & formed design, to kill or otherwise personally to injure some particular individual, kills him in execution of that design: Ex lying in (~~wait~~) ambush, former menaces, old grudges &c, are evidences of that former design. 1 Hal 451. 1 Hawk 121.2. 3 Bac 555. Kel 127. 3a.

IIdly When one kills by an act which indicates enmity to all mankind. Ex: By shooting into a crowd. 4 Bl 199. 200.
Semb Dalt 251. 3 Bac 555. 1 Hal —.
This is also express.

Distinctions not well taken by Blackstone (4 Bl 199. 200.) — Express malice seems to me to be that, which, in point of fact, concurs with the act of killing. —
Implied — that which so concurs only by implication of law. 1 Hawk 122.
Ex: 1st Discharging a ball with intent to kill or hurt John Stile, or whomsoever it may strike. 2d Doing the same act, with intent to kill, & steal, an ox.

So in case of deliberate duelling, it is express. 1 Hawk 122. 1 Bulo 85.). Kel 129.
No excuse, in this case, that the party slain attacked first, or, that the slayer did not intend to kill, but disarm. In the deliberate design to obtain the master by personal violence, is express malice. (3 Bulo 171 1 Hal 452. 3. 4 Bl 199. Kel 27. 3 East 581. Dalt 296.). 2 Mod. 58.

So, the seconds of the person killing, are guilty of murder, by express malice — and according to some, those of the opposite party. Quere. (4 Bl. 99. 1 Hawk 124. Preem 514. 1 Hale 454. 3. 458.) Nott 10. Amt. as to 4th latter seconds.

Giving a challenge is, at Com. law a high misdemeann. (3 East 581.) Here the punishment is prescribed by Stat.

Murder.

If a person upon no provocation, or a slight one, suddenly attacks another & kills; it is murder by malice express. Kel 27. 56. 129. 127.

For, so cruel & ferocious an act, in such case, is evidence of a hardened, deliberate malignity towards the deceased. (1 Hawk 125. Post 255.

Bracton calls this implied malice. (1 Bl Com) Quere, ~~which is right?~~ It seems to me express.

So, generally, even if on a sudden & great provocation, one beats the other, in a cruel & unusual manner, & kills him; tis murder by express malice. (1 Bl 199) Ex: case of the boy tied to the horses tail &c. (1 Hal 454. 473. 474. Kel 127. 1 Hawk 126. Br & Bro 131. Palm 545) Ex: of stoning to death.

So, if on a sudden quarrel, he who kills, seems to have been master of his passion at the time; it is murder, & the malice express. (1 Hawk 123. Kel 58.

If one committing a breach of peace, as by fighting &c, suddenly kills an officer of the Peace, who attempts to suppress it; he is guilty of murder. (1 Hawk 127. Kel 58. 2 Mc & Y 569 & c 5 J. 32 no 2. 46 40. 96 68. Post 308. 310.

So, of a private person acting in aid of the officer, if ~~Kel~~ 50. 114. But the object of the interference, must be made known ~~to be such, &c~~ ~~acting within his district or limits~~ = Focus, only, manslaughter. 1 Hawk 127. Post 135. 311.

IIII^dly Malice is implied, when the killing is in

* Except in the case of an officer having a warrant acting within his district or limits.

Murder.

consequence of an unlawful act, intended altogether a principally, for some other purpose, than that of killing the person slain. 1 Hawk 122. 126. 4 Bl 200. 201.

Ex: One shoots at a fowl with intent to steal, & kills a person accidentally; Or shoots at A. & kills B; Or lays poison for A, which B takes &c (4 Bl 200. 201. 1 Hawk 120. Kel 111. 117. 1 Hal 465. 474. Mo 67). Plow 101. 3. Bac 857). In these cases ye malice towards ye party slain is called implied.

But the intended act must be felony. Hence, the killing in regularly manslaughter. (3 Inst 56). 1 Hawk 112. 113. 125. 128. Kel 111. 117. 4 Bl 183. 192. 193.) (ex.)

Express seems to be that, which, in point of fact, concurs with the act of killing the person slain.

Implied, that, which is concurs only by imputation of law. (2 Ld. Raym 844. 3 Hawk 122.6.) (ex.) =

Examples Express: 1 The poisoning: One gives poison to a woman to procure abortion; & it kills the woman: malice implied. 4 Bl 201. 1 Hal 429.
Qu. is the act intended felony?

Just and gave his wife a poisoned apple, to kill her - She gave it to her child, & killed it - not herself - = implied malice. 1 Hawk 126. Plow 475. 3 Inst 51. 9 Co 81. Cro Jac 555. 1 Hale 436. 441. 467). 2 Ld. Raym 854. 855. Post 261. Kel 111. 28 May 1581. 2 Ld. Raym 855.

But when one kills in consequence of such an act as indicates enmity to all mankind, tho' not to the deceased in particular, it is Express.

Ex: Wilfully shooting into a collection of people & killing one. 4 Bl 199. 200. 2 Ld. Raym 854. 28 May 143. 1 Hawk 13. 1 Hal 475. 3 Inst 57). Post 2912.

(Hale)

Murder.

Here the intent concurs with the act of killing; the intent being to kill any one whom the ball might strike.

If one kill an officer, in a struggle to escape from a lawful arrest; it is murder by malice implied. The design was principally, to escape. (1 Hawk 120. 129. Hel 86. 130. 1 Hal 468. Post 29. 135. 308) not to injure the officer.

In the last case, it is no excuse that the process was erroneous. — Not void, by being so.

Same rule, though the officer (being a public one) did not inform, for what cause he was about to arrest —

So, though the officer, (if he was a public one) did not then have warrant, before hand. 1 Hawk 129. 130. 9 Co. 66. 68. Post 155. 311. 312. 318. 6 T 280. 1 Bl 296. 2 McN 85).

All homicide is presumed to be malicious — onus probandi, is on the accused. 4 Bl 201. 9 Co 6). 6. Post 255. 1 Hawk 124. Hel 3). 112. 2 McN 345.

Therefore all homicide is murder, of course — unless 1st justified by command or permission of law.
2d excused on ground of misadventure or self defence.
3d. Alleviated into manslaughter, by being, either the involuntary consequence of some unlawful act, not amounting to felony, or occasioned by some sudden & violent provocation. 4 Bl 201.

If several are engaged in a preconcerted unlawful act, & one of them, in execution of the general design kills a third person; they are all guilty of murder.

Secus, if the killing is not in execution of the common design, & the others do not aid or consent to it.

(Ex.)

Murder.

When the slayer only is guilty. (Kel 113 &c. Dal 351.)

So if the unlawful act is not preconcerted; as in a sudden affray. (Kel 11. 1 Hal 466)

Punishment of murder is death: originally strangable. (So that unlearned only were capitally punished) 1 Bl 201. 1 Hal 470

Now by three English Statutes - 23 H 8. 1 Edw. 6 & 5. Eliz. Clergy is taken away from murder, their abettors, receivers, & accessaries. 1 Bl 201. 2 Hawk 458. 9. 331. 3 In. 58. 2 Hal 294.

The statutes seem not to extend to accessaries after the fact.

A Court it is dead by Statute. 1 Bl 201.

Judgment that he be hanged by the neck till he is dead. 2 Haw 331. 2 Hal 399. 3 In 54. 211. 4 Bl 403.

If woman condemned during gestation (quick with child) execution is respited, till her delivery.

But this is no excuse for not pleading - & for Judgment being delayed. 2 Haw 458. 2 Hal 413. 4 Bl 395.

But a respiting for this cause can be had but once. 2 Haw 458. Find 478. 3 In 1). [Becoming insane; ante - 4 Bl 395.]

Execution is not complete, till the convict is dead. On recital, he must be again hanged. Sooner hanging being) no execution. 4 Bl 403. 2 Hale 412. 2 Haw 458. Find 470.

Murder—

1. 3. When one (kills murders) an officer endeavouring to arrest him, the prosecutor is not bound to shew that the deceased was an officer, otherwise than by proving that he acted as such. 4 T.R. 365. 2. Mc. N. 488.

Qu. May not the prisoner then prove that the deceased was not an officer? It would be may; but the rule, adduced only, to the proof, necessary to be adduced, by the prosecutor.

Petit Treason—

There are certain instances, in which murder, as being more than ordinarily heinous, is denominated Petit Treason.

It is, indeed, no other than murder in its most odious form & degree. 4 Bl 202. 4. Post 107. 324. 331.

At Com Law many offences were called petit treason, which are not now. Ex: Piracy by a subject. Grand jurors discovering the Kings counsel. Wife's attempting to kill her husband. &c. 1 Hawk 131. 3 Inst 20. 2. 1 Hale 377. 382. 5 Bac 140.

Now, by Statute 25. E. 3. no offence can be petit Treason, except in the following instances: 1st Where a servant kills his master. 2d Wife her husband. 3. (In England) the ecclesiastical his prelate. 5 Bac 141. 3. 4 Bl 203. 1 Hawk 131. 2 Mc N. 574. 5.

Called Treason, by reason of the violation of private allegiance in addition to murder. 4 Bl 203. Post 107. 324. 336.

Petit Treason.

Killing of a husband &c, not petit treason, unless in such circumstances, as would make the killing of another person, murder. 3 Bac 141. 1 Haw 132. Ly 254. 1 Hal 375. 380.
No petit Treason includes murder. 2 Mo. R 374.

If a wife divorced a mensâ &c, kills her husband; traitress. Secus if a vinculo &c. 4 Bl 203. 1 Hal 380. 381. 1 Haw 133. n. 3 Bac 141.

If a wife procure a stranger to murder her husband, being herself absent, at the time; she is accessory to murder only: But if a stranger procure the wife to do it; he is accessory to petit Treason. 3 Bac 142. 3 Inst 20. 139. 1 Hale 24.5. 1 Haw 132. Foster 128. 332.
For the nature of the accessory's guilt follows that of the principal.

Murder of one's mistress, or master's wife, petit Treason, tho' not within the letter of 25 E 3. 3 Bac 142. 3 Inst 20. Plow 86. 1 Haw 132.

If, murder of one who has been master, upon malice conceived during the service, is petit Treason; because in execution of a treasonable intention. 1 Haw 132. Plow 86. 1 Co 99. 3 Bac 142. 4 Bl 211.

Murder of a Father by a child, not petit treason unless the latter is by reasonable construction a Servant to the father. 1 Haw 131. 2. 3 Inst 20. 1 Hal 380.

Originally clergyable: Clergy taken away, by 12 H 7. from aiders & abettors, & Counsellors by 23 H 8. 4 Bl 204. 3 Inst 117. 4 & 5 P & M takes it from accessaries after the fact. 1 Haw 133.

Punishment, in case of a male, to be drawn to the place &c, & hanged: Female to be drawn &c, & burnt. 4 Bl 204. 1 Hal 382. 2 do 394. 3 Inst 211. 2 Hawk 321. 1 do 123. On an indictment for petit Treason the prisoner may be convicted of murder. Foster 399.

Qu. Is petit treason known, in p. L. as a crime distinct from murder?

Of Arson

It is the maliciously & wilful burning of the house or out house of another. 4 Bl 220. 1 Hale 566. 3 Inst 66. 2 Hawk 108. Leach 218.

Not only the bare dwelling house, but all out-houses, that are parcels of it, (i.e. Within the curtilage) as homestall, as barns, stables &c, may be the subject of arson. 4 Bl 221. 1 Hal 567. 4 Co 20. 1 Han 165.

So, a barn, filled with corn, is within the definition, though not parcel &c. 4 Bl 221. 1 Han 165, 6. 3 Inst 69.
Burning a stack of corn anciently was arson, but now. 4 Bl 221, 1 Han 165.

Burning the frame of a house is not arson — because not within the meaning of "domus". 1 Han 165. 1 Hal 568. 3 Inst 67. 1 Russ 2 89 — not a habitation.
Burning a prison is arson; being the house of the keeper, which unsil. Leach 67.

Arson may be committed by burning one's own house, (it is said) if another's house is burnt in consequence of it. But here the offence consists in burning the latter. 4 Bl 221. Co 3 77. 1 Han 165. Leach 217. 219.

So, if one, seised in fee, or possessed for years only of a house, standing at a distance from all others, burns it; not arson. 1 Han 165. Co 3 77. 1 Russ 351. Post 115.

And if one so seised or possessed in Town, burns his own, with evident intent to burn another, but actually burns his own only; not arson. 1 Han 165. 1 Hal 568, 9. 4 Bl 221. Reid 29. Post 115. 116. Co 3 35. By much the stronger opinion. Leach 217. 219. Reid 29.
So, if he is in possession, under an agreement for a lease for years. Leach 219.
So, if tenant from year to year. Leach 238.

Arson.

But the wilful firing of one's own house, in a Town, is a high misdemeanour, incurring fine, imprisonment, pillory & sureties for good behaviour during life. 4 Bl 221. 1 Hal 568. 1 Haw 166. Neil 2 y. by reason of y^e danger to others.

The indictment should not be for arson. Neil 3 y.

If a Landlad, or Reversioner, burn his own house while in possession of his Tenant - it is arson. So is pulling the Tenants house. 4 Bl 221. Post 118. 1 Haw 165.

Arson in Comm. is substantially the same, as at C. Law. except, that by our Stat, the burning of any barn house, or out house is arson. Stat 152. s. 6.

The punishment here is different, under certain circumstances, from the same, at C. Law. Statute extends to Ships & vessels. (So the meaning that these in Ben are Arson? The punishment is the same, but the offence, & trust, would rarely be called arson.)
- If life is destroyed or endangered, punished w^t death - else, State-prison.

Burning "What? - Neither a bare intent, nor an actual attempt, by applying fire, is a burning; if no part be burnt. But the actual burning of any part is, tho' it be extinguished, or go out by itself. 1 Haw 167. 1 Hale 567, 0. 3. 3 Inst 65. - 4 Bl 223. 2 Hawk 503.

Burning must be "malicious." Secus, only a trespass. Burning thro' negligence, a accident; not arson. 1 Haw 167. 1 Hal 569. Plow 467 0. 4 Bl 222.
As, if one in shooting, accidentally fire another's house.

Yet, if one intending maliciously to burn A's house, accidentally burns B's; it is arson: for the felonious intent. 1 Haw 167.

It is a C. Law felony, punishable with death. (Burnt to death in the reign of Ed 1. (4 Bl 221.2.) & not clergyable. (4 Bl 374.) But it seems to me to have been entitled to clergy by Stat 25 E 3: but, was ousted of it first by 21 H 8. which being repealed by 1 Ed 6, it was ousted again by 4 & 5 P & M. 4 Bl. 222.3. 2 Haw 481. 503.

Arson

Denied also to accessaries before the fact by 4 & 5 P & M. 4 Bl 222 3.

By our Stat, this offence ~~if committed by a person of the age of 16 years~~ is punished with death (~~but 12~~) if prejudice or hazard happen to the life of any one. It extends to barns, outhouses, ships & vessels, if life is destroyed or endangered [~~Suppose a person under 16 commit the act punishable for misdemeanor~~?] Burning one's own building to defraud insurers, State prison

1 Con 151.155.

By another stat of ours, if any male of the age of 16 or more, shall wilfully & feloniously burn, or attempt to burn, by setting on fire, any State house, County house, Town house, school house, church, out house, barn, store, ship or vessel, & no prejudice or hazard &c - Newgate, at the discretion of the Court, not exceeding ~~7~~ years. (1 R 185. 553.) - Not, States prison.

By the second offence confinement in Newgate for any limited period, or for life. But according to the gen. rule, the second offence must be committed after a conviction for the first. 1 Ham 138. 1 Mal 324. 5 Mo. 685. Dyer 327. 2 Bulst 349.

In case of a female confinement in the common workhouse a county gaol in the County where the offence, for the same period as males in Newgate. 1 R 186. must plead be 16.

(Is the word in this Stat "attempt to burn by setting on fire", mean such burning as falls within the Com Law definition supra 2) It seems that they do. If so, it may be argued that the burning punishable by the first Stat must be total. Leg Co. Statutes made at different times. Different Statutes burning has a determinate meaning in law.

Does then the partial burning of a ship or vessel come within the meaning of the first Statute? I conceive it does. The same not is contemplated in case of a vessel as in case of a house &c.

Of Burglary.

It is the act of breaking & entering into the mansion house of another, in the night season, with intent to commit a felony. 4 Bl 224. 3 Inst 63. 1 Haw 159. 1 Bac 335. 1 Hale 549. 2 do 360.

— The usual definition —

As to the place: Seems not absolutely necessary, that the breaking should be of a mansion house: Walls of a Town, or a church. Ex: gr: 4 Bl 224. 1 Haw 162. 1 Bac 335.

The necessity of the subject's being a mansion-house, ~~seems~~ exists, in the case of a private building only. (4 Bl 225. 1 Haw 162.) The definition ought to include churches & walls of a Town. 2 McA 550.

The insertion of the word, mansion, seems indispensable, in the indictment, when the breaking is of a private house. Seems not, it seems. 1 Haw 162. 1 Bac 335.

The term, "mansion house," includes all out buildings, which are parcel &c, & within the curtilage, & homestall: Being protected, & privileged, by the Capital house. (4 Bl 225. 1 Hal 558. 1 Haw 163. 3 Inst 64. Kel 2). 52. 82. 1 Bac 335. Foph 42. 52. Leach 320.

The curtilage seems to be that portion of ground, which is inclosed with the house, by one common fence, or connected with it, directly by a fence. Therefore, an out house 8 feet distant, separated by an open passage, & not within, nor connected by any fence enclosing both, adjudged not within the curtilage. (1 Haw 113. n. Leach 145. 1 Hale 558.

Room or lodging, in a private house, (if the owner does not lodge in it — Or, if he enters, by a

Burglary.

different outward door) is the mansion house of the lodger. Secus, if the owner lodges in it, & enters by the same outward door. Tho' there is only one mansion house, that of the owner. 4 Bl 225. Kel 83. 4. 1 Hal 556. 1 Haw 163. 4. Comp 1. 2 Sal 592. 1 Haw 164. Foo 163. Kel 27. Leach 90. 230. 384. 278.

An uninhabited house can't be the subject of burglary.

If A has a shop &c within his curtilage, & lets it to B to work in, who never lodges in it; burglary cannot be committed in it. It is not B's mansion-house, being occupied by the lease; nor A's for he never lodges in it. 4 Bl 224. 225. 225. 1 Hale 558. 1 Haw 164. Hutt 33. 1 Bac 335.

Secus, if the hirer lodges in it. (1 Haw 84 m) or, if it were not leased by the owner.

A house, in which one sometimes resides, tho' not for a short season - animo revertendi - is a mansion-house, though no one is in it at the time. (4 Bl 225. 1 Hal 566. Dalt 97. 1 Haw 162. Foo 550. Kel 52. 5.) 4 Co 40. Popk 40. 1 Co. city-house, & country house.

So, a house which one has hired, to reside in, & host part of his goods into, though not lodged in (Kel 56. Post 77. Cro 276. 1 Hal 164. 1 Haw 162.

The house of a corporation is within the description, its officers living in it. Tho' in houses of the corporation. 4 Bl 225. Leach 89. Post 389. 1 Bac 335.

Not committed in a tent or booth - temporary - it is a tabernacle. 1 Bac 335. 4 Bl 225. 1 Haw 164

Under one stat. Burglary may be - not only at

Burglary.

Com. L; but he making a hole, to reach out goods, ware, & merchandize, tho' at a distance &c, & not lifted in. Stat 134.

Decided in Conn, that the cabin of a vessel, containing goods, may be the subject of burglary. Root 83. Quod mirum!

It is essential, that the name of the owner or occupier of the house, be inserted in the indictment. Leach 243.

"Night season" formerly it might be committed, at any time, between sunset & sunrise. 4 Bl 224. 1 Bac 334.
But now the term includes only the time between the evening & morning twilight. 4 Bac 224. 1 Val 350. 3 Inst 63.
Cannot be committed, during twilight.

It is said, if there is so much day-light or twilight, that one's countenance can be clearly discerned" not night season" within the definition.
But it must be day light or twilight - not moon light.
4 Bl 224. 1 Van 180. 9 Geo. 2. c. 6. 1 Roll 524. 2 Mc. V 600. 601.

"As to the manner - both breaking and entry need not be at same time.
Breaking, on one night, & entering on another, sufficient.
4 Bl 226. 1 Val 551. 1 Keil 67. 68. Leach 342.

Breaking may be, not only by thrusting open a door, but by breaking, or taking out, a pane of glass - picking a lock, opening it with a key, lifting a latch, or loosing any fastening. 2 Mc. V. 601. 2. 4 Bl 226. 1 Van 180. 1 Hale 553. 552. 551. 552.

So, coming down a chimney; for it is as much closed as the nature of the thing will admit.

Burg & Larc.

Breaking fixtures, in the house, w. cupboard, chests, &c, not within the definition - Semb - Post 108. 9. Hall 31. 1 Hale 557. 2 Mc. P. 605.

Entering by an open door, not breaking within the definition. Secus if having entered, he break an inner door of a room. (ut supra) - 1 Bl 220. 2 Hal 553. 1 Hawk 100. Hall 85. 2 Mc P. 601. 2.
This last is breaking the house - breaking chest &c is not.

Another breaking out, (the party having entered, with intent &c without breaking) or, being in, by the owner's permission) is a breaking within the definition at Com L, opinions contradictory. - 1 Bl 227. 1 Hawk 854. By St 12 & 13 Vict, declared to be &c. 1 Bac 333. 4 Bl 227. 1 Hawk 101 - Here, the entry is before the breaking. Ex: Taking lodgings with intent &c. So if, being in the house (ut supra), without a previous intent &c, he commit a felony, & breaks out - Secus, in both cases, if he goes out without breaking. 1 Hawk 100.

Entry procured by fraud (with intent &c ut supra) is burglarious. Ex: Being let in under pretence of business & then stealing - or procuring an officer to enter under pretence of searching for Traitors & stealing ut supra. Here is a breaking (a coming being occasioned ut supra - 4 Bl 226). 1 Hawk 101. Hall 42. 52. 44. 83. 82. 1 Hal 552. 3 Inst 64. 1 Bac 333.) - Law, not this to be evaded.

If a Servant lure & entice his master's chamber door (with intent &c); or a lodger in a private house, or inn, lure & entice another down (with intent &c) it is burglarious breaking and entry, of the mansion house of the Proprietor or occupier. - 4 Bl 227. Hall 6. 2 Bac A 601.

So, if a Servant in the house conspire

Burglary
with a Robber, & let him die, by night, that he may rob;
both are guilty of burglary. 4 Bl 227. Str 881. 1 Hal 553.
1 Haw 102. O. B. 1784. 2 Mc N 304

"Entry": the least entry, with the whole or part of the ~~body~~ person
or thrusting in any instrument, or weapon; as a pistol,
hook &c. discharging a gun &c. 4 Bl 227. 1 Hal 555. 553.
or a burglarious entry. Post 108. 1 Haw 161. 2 Keil 5. 1 Bac 334.
2 Mc N. 003.

But, it seems, that the instruments must be introduced, for the
purpose of committing the felony with - as a hook to draw out goods,
a pistol, gun, &c to demand ones money &c (decided 6 Parish 1785)
that being a hole through the door, so that there were chairs
on the inside, was not a complete entry - not being introduced
to take property. (1 Haw 102 n. Leach 342.) or to kill, or intim-
=idate for the purpose of robbing.

On an indictment for breaking & stealing, def^t may be
acquitted of the breaking, & found guilty of the stealing. Leach 5/1.

If several join, to commit a burglary, some of whom
stand at a distance & watch, while others break &c, all guilty
of the breaking &c. 1 Bac 334. 1 Hale 86. 81. 439. 555. 1 Haw 162.
Post 330. 350. 352. Kel 111. 2 Mc N 304.

"With intent": To constitute burglary, there must be a
felonious intent. Ecus, the breaking &c are a mere trespass.
4 Bl 227. 1 Haw 164. Leach 99. Str 20. 57. 1 Hal 552.
Ex: decided case: a servant having run away returns to take
his own money. 1 Haw 164.
Ecus, if it had been to rob, murder, steal &c. 1 Bac 338.

Sufficient if the intended act is a stat. felony - tho' not
C. Law. Ex: Rape - which is not a C Law felony (1 Haw 164. 4 Bl
228. Str 481.) for a stat felony has all the properties of a felony at C.L.
1 Bac 330.

F.

Burglary.

Not necessary, that the intention should be executed: intent alone sufficient: if the intent the jury are to judge. 4 Bac 22). 1 Hawk 184. 1 Hale 554. 2 do 556. Foster 107. 1 Russell 485. 1 Bac 330.

If one has been acquitted on an indictment for breaking a house &c. & stealing the money &c, he cannot be indicted for the same breaking & stealing the money &c. (But for the latter he may be. 2 do 178. breaking is the same in both cases; aliter of the stealing). Fol 550. 552. 2 Hawk 522.

Punishment: Burglary is a felony at Com. Law: punishable. Now punished with death; Clergy long taken away by Stat 1 Edw 6 c 12 & 18 Eliz. Also taken away from accessories before the fact, by Stat 3 & 4 Wm & Ma. 4 Fol 238. 1 Hawk 185. 2 Hale 304. 1 Bac 330.

Does stat extends not to accessories after the fact.

4 Geo 1 c 11 s 5. By Comm. for the first offence, state prison for life, if a male (by stat 18) not exceeding 2 years for the 2d not exceeding 5 years for the third, during life (by stat 54.) By Comm. Laws— But if the Burglar be guilty, in the perpetration of unusual cruelty, or, violence, or, if armed with any dangerous weapon, a clearly to indicate "violent intention"; — Newgate, during life, for the first offence, or a fine levied at discretion of the Court — not however less than 7 years.

"Dangerous weapon" i.e. weapons of death. I suppose.

"Violent intention": i.e. against any person — or any one who shall oppose them, I suppose. Decided in C. that burglary, being an offence at C.L. may be prosecuted as such; & that the stat only declares the punishment. 1 Root 59.

Females, confined in common work house, or common gaol, ut supra. i.e. for the first offence not exceeding 3 years &c.

Of Larceny.

Of Larceny, or theft 2 kinds: 1st Simple. 2d. Mixed.
Simple, is plain theft, unaccompanied with any aggravation.
Mixed, or Compound, includes in it the aggravations of taking
from one's ~~house~~, or person. 4 Bl 229. 1 Haw 134.

2d Simple: Simple larceny is the felonious taking & carrying away of the personal goods of another. 4 Bl 229. If the goods are above the value of twelve pence, the offence is grand larceny. If of that value only, or under it; it is petit larceny. 1 Hal 503. 4. East 124. 1 Bl 229. 2 Inst 4. 5. 1 Haw 134. 145. 146.
See Foster 3, in delivering the opinion of the Court, Hammond's case, Leach 1089. "Larceny is the felonious taking of the goods of another, without his consent & against his will, with intent to convert them to the use of the taker".

If goods above the value of 12 pence are stolen, by several — each guilty of grand larceny. (1 Haw 145.) stealing under the value of 12 pence, at several times, from the same person, not grand. 1 Haw 145 n. Cro Jac 184. Leach 265. (Ld Book contra) (1 Hal 531. 2 Hal 79) Each taking is a distinct offence, in petit larceny.

The difference between grand & petit, is in the value of the goods. Hence the rules laid down with respect to the nature of simple larceny, in general, apply to both grand & petit. 4 Bl 229. 1 Haw 146. East 73.
In punishment, they differ essentially. Ibid.

"Taking": Gen[l] rule, that every felon includes a trespass: Hence, if the party is guilty of no trespass in taking; he cannot, according to the rule, be guilty of felony in carrying away. 2 d. S. 588. 2 Bac 472. Hal 84. 1 Haw 134. Hal 24. 4 Bl 231. Qu. at this time? next p.a.

The goods must, therefore, be taken from the possession of the owner, actual or constructive. 1 Haw 352. n. Constructive

Larceny.

possession, is a right of present possession. 1 Rus. 406 & 407. 3 do 8.

Hence, if one finds goods & converts them animo furandi; not Larceny. No trespass: The taking is, per se, lawful. So, generally, one possessed under a delivery by the owner, is not guilty of larceny, tho' it be said, he afterwards embezzling. 2 Bac 47 2.3. 4 Bc 230. 1 Rus 103. 1 Ham 134.135. 1 Hale 504.
Ex: A carries off goods, who converts them &c. A tailor, of cloth &c.

Ex: As to the cases where a delivery to a bailee &c. Ex lately holden, as a general rule, that, when the delivery is for a certain special purpose - owner has a right to countermand the delivery (Leach 142.) the possession is in the owner; Ergo, embezzling animo furandi, a felonious taking. Ex: A watch-maker, embezzling animo furandi, a watch, delivered to clean. (6 B.C. 7.8.) Cattle delivered to be washed. (6 B. 158.) Guineas delivered to be changed. (2 B. 1.) &c)

In these cases, a previous intent to steal, seems not to be supposed: But the constructive possession being in the owner; taking with felonious intent, is a felonious taking from the owner. 1 Ham 135. 136. The taking in these cases, must, not be trespass (embezzling)!

So of goods delivered for sale exclusively. (4 B. 1.) 9. 1 Ham 131 n. 2 Bac 81.2. Com 294. 296.
Ex - Ergo as to the 4th rule last pa. Leach 242. 349. Cy 5. 2 M & R 588.

If one obtains a delivery, with intent to steal, & carries away, or embezzles; it is Larceny: So, by the ancient rule. Ex: Obtaining a bill of Exchange, under pretence of discounting, but with intent to steal & then converting it &c. (1 Ham 135 n. 13). Leach 268. 213
& misconversion
Now, in these cases, if taking not would be a trespass, contr. =

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= Hal P.C. 82. 1 Hawk 90. 8). Stark Ev. 3. 6. 95. 231. 241. 2 Bac Ab 673. 3 Inst 108. Hal 63. 1 Hid 254. 2 McN 589 &c. Se fraudem rego, if mist. can take no advantage: possession, in law, to mist in the owner. =

= In the former it is true, it is fair, to relinquish the contract, or permission. =

= Ex: the owner retains the property in law. Hal P.C. 1 Hen. 95 a.) =

of bailment = In the latter there was no original intent to have been, but to come on the Contract; but to steal. Cro 2 C.C. Hal P.C. 1.

* What need of these words, considering the Contract as rescinded by the taking & trespass; when true is, otherwise, a right to countermand: = i.e. to structure possession in owner?

Where, in the instance more to buy, & the horse is not paid & delivered. Here, both the actual & constructive possession of owner is parted with. (Leach 4 Ol. 95. 558.) =

= Vendor's right of possession transferred, by the terms of the Contract: altered in the above case of bailment.

So, obtaining goods from an officer (with intent to steal) under a writ &c, in virtue of an execution on a judgment, obtained by fraud = the C. &c, is = a felonious taking. 2 Bac 673. 3 Inst 108. Hal 63. Ray 256. 176 a 35.

For the Return & Judgment are void, as regards the fraudulent party.

Seems clear even according to the older authorities, that of a carrier, having carried the goods to the place, takes them animo furandi; the taking & felonious intent originally: for the Bailment is determined; ergo, he is a stranger. 1 Han 136. 3 a 107. Hal 505. 2 Bac 673. Hal 83. 4 Bl 230.

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Or. if he take them to a different place from that of their destination, & then embezzles, animo furandi. Kel 81. 2. 8. Mast 218. 176 al 504.5.

So in the case of hiring. Leach 238. - Same reason - i.e. by the breach of trust, his possession becomes wrongful.

So. if a (carrier opens a bale of goods & takes away part. - is indicted a cash 80; it is felonious taking. 176 al 504. East P.C. 695. 2 Mast 80. 1 Rick 238.

Because, as some say, he has no property in the goods; (Qu.) though he has in the thing containing. 2 Bac 71)=

= Blackstone says because the animus furandi is manifest. 4 Bl 230.)=

= Hawkins says, because possession of a part distinct from the whole is gained by wrong. 1 Haw 103. 2 Mod. 1 87.)=

= The true reason seems to be that the possession in law is, all the time, in the bailor or owner. Kel 85 Leach 241.

The true is, always, a right to countermand.

If one sells a horse to another, & the latter, in delivery, immediately rides away with him, without vendor's consent; not larceny. Whatever the original intent might be. Absolute possession in vendee. Leach 401. 2. Hawk. 542. Vendor has parted with his right of possession. It is also a fraud.

Said that if A lets a horse to B with intent to convert &c, ride away with him; not larceny. (Because both the possession, & the right of possession, for the term of bailment, is parted with by bailor. During that term he has no right to countermand the delivery.) 2 Ld Ray. 2. 1 Salk. 892. Leach 213. 358. 404) 4 Bl 230. 176 al 504). Thus the original hiring must be bona fide, & the intent to steal, subsequent. (Leach 358. Secus, if it is larceny. Leach 213. 358 (note)

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Suppose that after the time for which the hiring was, has expired, the hirer forms the animo furandi. Leach 1 v. 93 n.

1st When, according to the terms of the bailment, bailee has no right to countermand, at the time of converting, the conversion cannot be larceny; unless the delivery was obtained with intent to steal.

Ex: Hire hire, bonâ fide, for a month, converts, animo &c, on a week Leach 5 v 8.

2. Recd. if bailee according to the terms &c, has a right to countermand - Constructive possession in the last case; not in the first. Ex. Deposit bailment to a ~~carrier~~ carrier.

3rd If bailment, was obtained not with intent to steal, it is not larceny.

The case non-delivery of goods to bailee, to Bailor, when the former is bound to redeliver, is not of course evidence of a felonious intent, even in those cases, in which converting, animo furandi, is larceny: for it may happen from various other causes. 1 R & P 230.

1 H Com: L, according to the ancient rule, if a Servant pawn his master's goods, committed to his custody; not a felonious taking - mere civil injury - Trust & Trust: Now by statute 21 J 27. 8. it is larceny by the same rule as the case of a Servant: except in apprentices & Servants under 18. 1 R & P 230. 231. 1 Hal 504. 2 Bac 4, 4. Hawk 18, 13.

Qu: Why does not the case come within that of the waiter, mentioned &c: (3rd 4th Cook). Ans. Same, as to the case at C.L. Has not the statute made a change in more respects?

But at Comm. L. more regard to the value of animal, if

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the servant has not the possession, but merely the care & oversight &c; running away with, or embezzling it, a felonious taking. 4 Bl 230. 1 Hale 505. 1 Haw 130. Mod 240. Post 94.

Ex: a Shepherd: a butler: possession in the master. Hil 35.

If goods stolen, are stolen from the thief; the second taker is guilty of a felonious taking, from the owner; for the property & possession in law, are in him. (1 Haw 130.). 2 Bac 473. 2 Hawk. P. C. 589.

If one steal goods in the County of S., & carries them into the county of D.; he is guilty of a felonious taking both in S. & D. & may be prosecuted in either county: For every moments continuance of the offence of taking, is a repetition of it. 1 Haw 130.; Foot 89. 2 Bac 473.

Secus, if original taking was in a foreign State. 1 Haw 137. Rudge. Pattison. 2 Johns. R. 477. 479. Contra Rex v Lee: 4 Mass: 1 Mass. 166. 2 Leo 14. 3 Co. R. 105.

It is not larceny to receive goods, clandestinely, from the wife of the owner. Hawk 49. Because her, taking is not felonious. She cannot be guilty as principal: Ergo, no accessary.

"Carrying away:" The least removal from the place is a carrying away (tho' he afterwards leave them, or is detected) Ex: reading a horse out of the close, he is apprehended.

" " carrying goods down stairs out.

" " taking out of a trunk, & laying them on the floor. 4 Bl C 230. 3 Inst 108. 2 Haw 140. 2 Hawk 218. 1 Hale 505. Hil 35. 2 Bac 474. East. P. C. 2. Hawk. P. C. 592. &c.

Building a bale of goods, in its end, not a carrying away. Not removing from the end to the other of a waggon, sufficient. 1 Haw 141. n. Hawk 229. C. B. 1784. Case of Hammond carrying. M. Hawk 297.

Larceny.

"Felonious": The taking & carrying away must be felonious, i. e. animo furandi. Hence, those wanting understanding, are excused. So, are mere trespasses.

Ex: A Servant privately takes his master's horse to ride, & returns him. So, taking one's plough &c without leave & using it, & returning &c. 4 Bl 232. 17 Cal 509. Intent to be discovered by law. 4 Bl 232. East P. C. 585. 17 Cal 504.

Usual evidence of such intent is studious secrecy & concealment — with a purpose to convert & defraud the owner.

Whenever one takes personal goods, from the possession & wrongfully against his will, the law presumes a felonious intent, till the contrary appears. Leach 203.

"Personal goods of another": Things real, or savouring of the realty, are not the subject of Larceny: Land cannot in its nature be taken &c.

And Corn, grass, apples &c, growing, or before severance, are not within the Law; as they adhere to the freehold. 4 Bl 232. Leach 208. 2 Bac 470. 1 Hawk 187. 17 Cal 141. 1 Mod 89. 17 Cal 509. 512. i. e. if they are sowed & carried away by one continued act; for then, they never were, as moveables, in the possession of the owner actual or constructive. Trade Larceny in many cases by Stat: 4 Geo 2. 4 Bl 233. 2 Bac 470. 17 Cal 142.

Lead, if severed at one time, & taken away at another, Metal severed by the thief, or the owner, or any person. Here, when taken, they are personal in the owner's possession. 4 Bl 233. 3 Inst 109. 17 Cal 510. 17 Cal 141. 2 Bac 470. 1 Hawk 187.

Taking wool from a living sheep, or milk from a cow, animo furandi, is Larceny. Leach 181. 2 Mc. N 373.

Reason for the distinction between personal chattels & things fixed to the freehold may be: that as the latter are not so easily taken & removed, not so liable to be stolen. Ergo, no severe laws not necessary, as to them. Diff. reason — Generally not so valuable.

Larceny.

1 Hawk 142. See 4 Bl 232-3. See 2 Bac 469. 470.

Taking charters of land cannot be larceny, it is said, because they relate to the realty, are muniments of the freehold, descend to the heir. 2 Bac 470. 3 Inst 109. 1 Hal PC. 510. 4 Bl 234 St 1137. Leach 13. Yet trover will lie for them.

The goods must be of some value in themselves, & some one must have some property in them. Hence, the taking of choses in action cannot, at Comb. be larceny. of no value intrinsically, but merely by relation to something else, viz. the right of which they are the evidence, & this right is not property in possession. 4 Bl 234. 8 Co 33. a. 1 Hawk 142. 2 Bac 470 ---- 2 Inst 688. 1 Hal PC. 510. 2 Bac 470. (Because they might answer the purposes of money at the Lumps.) Made Larceny by Stat 2 Geo 2. 2 Bac 470. 1 Hawk 142. No such stat. here.

Taking animals ~~here~~ nature, & not tamed or confined, cannot be larceny at C.L. tho' of intrinsic value. Ex: Deer in a park. fish in an open river. birds, beasts in their natural state. &c 4 Bl 235. Dalt 366. 1 Hal PC. 511. 2 Bac 471. 1 Hawk 143. 4.

Tame, if reclaimed, or confined, & may serve for food. Ex: Deer in a park. fish in a trunk &c. 4 Bl 235. 6. 1 Hal PC. 511. 2 Bl 393.

But such animals ferae naturae, as will not serve for food, are generally deemed of no value, in the law on this subject. Ergo tho' reclaimed or confined taking them cannot be larceny at C.L. Ex: Foxes, monkeys, bears, wolves &c. 1 Hawk 143. 2 Bac 471. 3 Inst 109. 1 Hal PC. 512. 2 Bl 393. 4 Bl 235.
Yet even in these cases a civil action will lie - for the taking. 4 Bl 235

Yet the taking of a beast reclaimed may be larceny, it is said, at C.L. as well as by Stat 37 E 3 c 2 Bac 471. 1 Hawk 143. 3 Inst 109. 2 Inst at C.L. 4 Bl 236.

But domestic animals may be valuable, tho' not serving for food; as horses, mules, &c: & therefore are subjects of Larceny.

So, those which do serve for food: as neat cattle, sheep, swine, poultry &c 4 Bl 235.

Some domestic animals, not at once valuable, in the law on this subject. Ex: Dog. - Colts - Eggs, taking, not larceny at C.L; tho' it may be a civil trespass. 4 Bl 235. 2 do 393. 2 Bac 471. 1 Hawk 142.

Under ~~certain~~ English Stat, excluding Clergy in certain cases of "goods, wares & merchandize" Stolen, money is holden not to fall within the description. Leach 42. 1 Sh. 234. 403.

"Of another": Goods of which no one is the owner, at the time of taking, not Larceny. Because true owner, waifs, estrays, &c, before they are seized by the crown having the right. 1 Hawk 144. 1 Hal 512. 4 Bl 295.).

None, at the time, the property is in dubio, or rather, in no one. It may become the King's, or, in certain events, be revested in the former owner.

But, tho' there must be a property in some person, at the time, yet, it is said, that the owner need not be known, & that indictment lies for stealing the goods of a person unknown. (4 Bl 235. 1 Hawk 144. Ry 99. 1 Hal 512.) i.e. that y^e indictment is sufficient.

But, in such a case, it is said (2 Hale 290. 2 Mod 319) that, at the trial, unless the property is proved to be in some stranger, it shall be presumed in the prisoner. 2 Hale 290. 2 Str. 881. 881. 1 Hawk 144. n. Cases C.B. 1785. 352.

Larceny.

Stealing the goods of a parish church is larceny; the goods of the parishoners. (1 Hawk 145. So, stealing a shroud from a dead body; it is the property of him who was the owner, when it was put on. (1 Hawk 145. 3 Inst 110. 12 Co 113.) Stealing or taking up a dead body, not larceny; but an indictable offence; a high misdemeanor. (2 T.R. § 33.)

Punishable, in some of these states by stat: Law.

A person may commit larceny, by taking his own goods in certain case. Ex: he delivers goods to a Carrier, Tailor, or other bailee, & afterwards secretly & fraudulently takes them away with intent to make the bailee answerable. (1 Hawk 145. 3 Inst 110. Cr. L 530.) So, if he rob his own messenger, with intent to charge the hundred. 4 Bl C 234.

If A's goods are bailed to B; it seems, that a person, stealing them, may be indicted, generally, as for taking B's goods. 1 Hawk 145. C.B. 1785. Kel 39.

On an indictment for larceny, if a felonious taking is not found, the Court cannot, on special finding, give judgment against Deft, for a trespass. (Kel 29. Leach 65.)

The two offences are generically different.

Punishment: Simple larceny, whether Grand or petit is a C.L. felony. 2 Bac 475. 1 Hawk 89. 1 Hawk 146. 4 Bl 95. 97. 2 Hil 189 — 1 Hil: L. 208.

Grand: is a capital felony at C.L. but within the benefit of Clergy; which however in many cases is taken away by Stat, as in house stealing &c. — money (4 Bl C 237. 8. 1 Hal 12. 3 Inst 53. 2 Hawk 489.

Petit larceny, punished at Com Law, with forfeiture of goods & Chattels, & whipping & other corporal punishment (1 Hawk 146. 3 Inst 218. 1 Hal 70. 530. 4 Bl C 237. 95. 97. 2 Bac 476.)

Not forfeiture of lands, not being a capital felony, of course, no attainder.

Larceny

In Conn: no distinction between Grand & petit Larceny. Fine not exceeding 7 dolls. if the value of the goods amounts to $3.34, whipping not exceeding 10 stripes: if of the value of 34 cents or more & under $3.34, no whipping - treble damages to the owner &c (Stats Conn 158-9) Law now (1832) altered. Forfeiture of treble value - fine &c & whipping. In many of the States, state-prison, or penetentiary. St Conn. 158-9.

III^d. Mixed Larceny. This has all the properties of simple: ergo, the rules, laid down as to simple, will ably to this. It always, therefore, involves the felonious taking & carrying away of another's personal goods. But it is also accompanied with the aggravation of taking from one's house, or person, or both. 4 Bl 239. 1 Hawk 151.

1^o. Larceny from the house: This tho' more aggravated than simple, is not distinguished from it, at C.L. either in its general nature, or punishment. 1 Hawk 151. 4 Bl 239. 240.

If indeed it is accompanied with a breaking of the house, in the night season, it differs most essentially; but it then falls under a different description. It is burglary. (ante) & 4 Bl 240.

But by Statutes in Eng: the penal consequences of mixed larceny, differ from those of simple, in general. Benefit of Clergy being taken away from the former, in almost all cases. 4 Bl 240. 1 Hawk 154. 1 Hale 508. Kel 31. Post 78. Leach 310.

In Conn: ~~not distinguishable at all from simple larceny.~~ the punishment is now (1832) state-prison.

2^d Larceny from the person. This is either by stealing privately - or by open & violent assault. the latter offence is called Robbery. 4 Bl 241. 1 Hawk 147.

The offence of privately stealing from the person, (as by pocket picking) is a felony at C.L. & is of above the value

Robbery.

of 12 pence, Capital, but Clergyable at C.L.. Clergy is taken away however by Stat 8 Eliz. 4 Bl 241. 1 Hawk 156. 1 Hal 521. Leach 233. 2 Mc N. 599 &c

If of the value of 12 pence only, or under, not capital at C.L. 4 Bl 241. Post 3. 2 Hale 335. 1 Hawk 151.

Difference, then in punishment, between simple larceny & privately stealing from the person, is, that, in the latter case (Clergy is taken away) if above the value of 12 pence. Alike, in the former.

Open & violent Larceny from the person, or Robbery, is the felonious & forcible taking from the person of another, of goods or money, of any value, by violence, or putting him in fear. 4 Bl 242. 1 Hawk 147. Value immaterial.

"Taking from the person &c" There must be an actual taking - An attempt to rob, not felony, at C.L. 1 Hawk 147. 8. 1 Hale 532. 3 Ins 69. 4 Bl 242. It is a high misdemeanor, incurring fine and imprisonment. 1 Hawk 148. 4 Bl 242.

Such attempt made felony by Stat 7 Geo 2 - transportation for 7 years. 1 Hawk 148. 4 Bl 242. Leach 22. 251.

If one takes the goods of another, in his presence, by violence & putting in fear (tho' not literally from his person) it is within the definition. Eg: first putting in fear & then taking away one's horse, standing by him. - or driving away his cattle which are in his presence. 1 Hawk 148. 1 Hale 533. Sal 613. Str 1015. Cowp 145. 4 Bl 242. 2 Mc N. 594. 599. 533.

So, if having put me in fear, he takes good from my

servant in my presence; it is a forcible taking from my person. 17 Can. 148.

So who receives my money to be by my delivery, while I am under terror from his assault, is guilty of a forcible taking from my person. So, if by putting in fear, he exacts an oath from me, that I will deliver it, & do it, in pursuance of the oath. 17 Can 147. 3 Rus 38. 2 Mc N. 594.

But a taking which is not either directly from the owner, or in his presence, is not within the definition. No Robbery. 4 Bl 244. 6 Can 2 478. Ste 1015.

If several join to rob A, & missing him, one of them goes from the rest, & without their knowledge, out of their sight, robs B., & then returns to them: all are guilty - because of the intent to rob, & to assist each other. 17 Can 148. 1 Hale 533. 534. 537. 2 Mc N. 590.

Qu: unless they collected for the purpose of robbing any person who might fall in their way.

Redelivery, after the taking is complete, does not purge the offence of taking: it is still robbery. (4 Bl 242. 17 Can 147. 3 Rus 66 69. for the definition does not require the continuance of the goods in the Robber's possession. 2 East 711. 1 Hale 533. 2 Mc N 594. 5.

"By violence or putting in fear." The criterion which distinguishes robbery from all other larcenies. Qu: Where there can be no robbery. 4 Bl 242. 17 Can 148. n. 3 Rus 38. Vel 69. 70. 2 Can 494.

"Violence": in this case denotes more than is implied in

the mere act of taking, which itself is violence in judgment of law. Ex: There is violence in pocket-picking. But robbery requires more.

It denotes violence of some kind offered to the person: but it must be such as is calculated to excite fear, Semb. 1 Hawk 149. n. 4 Bl 243. Post 128.

But actual violence to the person, is not necessary. Putting in fear sufficient. Ex: Case of oath extorted. Supra &c. 1 Hawk 149 n. Post 128. 9. Leach 203. 4. 257.

The violence, or putting in fear, must be previous, at least must not be subsequent. Ex: If one steals privately from the person, & afterwards keeps it, by putting in fear, it is no robbery. 1 Hawk 148. n. 2 Roll. R. 154. 1 Hal 534. 5. taking &c, by violence &c.

The violence &c must be purposely for the purpose of obtaining the money &c taken. Ex, where several persons are drunk & under pretence of carrying him home, drag-ged him, kicked him &c, & privately take his money-no robbery. 2 McN. 59). 1 Hawk 140. n. 6. B. 1784. K. B. 97). 2 Hawk putting a prisoner to extort money from him, & then actually extorting it, is robbery. Leach 260. 2 McN. 59).

As to putting in fear, sufficient that so much force or threatening, by word or gesture, as used, as might naturally create an apprehension of danger to the person. 1 Bl 243. 1 Hawk 149. n. Post 128. Leach 204.

So, such threatenings as is likely, according to common experience, to excite an apprehension of danger, to ones character or good name, sufficient putting in fear.

Robbery.

1 Hawk 149. n. 2: threatening to accuse one of an unnatural crime. 1b: 1 B. 1, 8 - p 296. 2 Hale. p 542. 2 Mc. A. 598. 9.
By all the judges of Eng, so holden - Post 129. Leach 199. 257.
Fear of personal violence not necessary. indispensable

Begging, with a drawn sword &c, sufficient for putting in fear. So, forcibly exporting money from another, under pretence of a sale. 1 East P. C. 1 Hawk. 149. 1 Hale 533. 2 Russ. 2 Mc. A. 597.

Prisoner convicted of a misdemeanor, in any bigger, by violence &c, to sell his goods, for the full value, & so taken, & dub. demd. not - no felonious intents. 1 Hawk 149. 4 Bl 243.

Ld Hale's case, Fol 73. That taking of goods by legal process, without color of right, & with intent to rob, is robbery in strictest legal sense. Ld Hale, when is the fear? or sufficient cause of fear? Circumstances it may be.

"Putting in fear" not necessary in the indictment. "By violence" sufficient. 4 Bl 243. 1 Hawk 149. n. 2. Fol 70. Leach 204.

"When the offence is laid to have been committed by putting in fear", not necessary to prove actual fear. Such circumstances of violence as pistols, &c are calculated, and likely to excite it, sufficient. Ex: one knocks another down, without warning, & takes him, while senseless. Robbery - tho' no actual fear. 4 Bl 243. 1 Hale 532. 1 Hawk 149. East 128. Leach 204. n. 3. 2 Mc. A. 598.

A seizure of goods (in execution) taken, not level any color of right, is no excuse. 1 Hawk 149. 1 Hale 547. So such attempt at evasion can avail the offender.

Larceny – Robbery – Forgery –

Whether openly taking goods from the person, without violence or putting in fear, is felony, of any kind – Dab. According to Hawk. it is not. (1 Haw 150. Ted Wil: 2 b. m. & 149 n). Ex: Snatching a hat from one's head, & running) away with it. (Ray 2 75. 5. Dy 224.) It does not, strictly fall under either of the divisions of larceny from the person. 2 Roll 154. Kel 43. 70. Lead 264.

Indictment for robbery on a highway, not supported by evidence of robbery in a dwelling house. Lead 5?. 2 Haw 495. 2 McN. 599. "Highway" in this case is part of the description of the offence.

Punishments:- a Capital felony (whatever the value of the goods) but clergyable at 6d. Now ousted of clergy by State 2 & 3 Vic 8 & 2 & 3 Wm 4 & M. ergo – death in England (1 Haw 149. 1 Burn 4 Bl 243.) both in principals & accessories before the fact.

St. C. 154

By Comt. like burglary: ~~State prison~~ ~~imprisonment~~ for 1st offence not exceeding ~~two~~ ~~three~~ years (~~if a male, in company, in common road, & not in house~~. St. C. 154. If with "personal force, or violence" a, to be issued "c. ~~State prison~~ ~~imprisonment~~ for life ~~(for first offence. St. C. 154.)~~ or, not less than 7 years. (What kind of robbery is meant in the 1st case?)

Of Forgery.

Forgery, at the Common Law, at C.L., is the fraudulent making, or altering in writing, to the prejudice of another's right. 4 Bl 247. 1 Haw 330. 210. 212. 2 Burn 855.

Records – other authentic writings of a public nature, as Parish Registers, & deeds, & it seems, wills are subjects of, were at C. L. (1 Haw 335. 338. 2 Burn 518. 1 Rol 70. 5. 76. 2 Ken 55. St. 69. 2 Rol 15

Forgery.

(Ray 84. (Mo) 100.) No decision at C.L. as to a will. (1 Hawk 338) but it is now forgery at any rate by Str. 19.2. (176 Am 210

But according to a great number of opinions, the making or altering of any private writings, of a nature inferior to deeds & wills, is not forgery at C.L. Ex: notes, orders, bills of exchange &c not Specialties. (1 Hawk 335. 5. 2 Bac 568. 1 Bell 65. Cro El 15, 155. 451. Cr. L. 853. 3 Bulst 265). And according to some there is no punishment in these cases. (1 Hawk 338.) not even fine & Seat.

But it has been holden since Hawkins' time, that the fraudulent making &c of any writing, by which another may be prejudiced is forgery at C.L. (5. Ed. R. 1461. Str 764). Barnard 10. 2 King 27.)
Fraudulent making &c of a bill of exchange, on unstamped paper is forgery. (2 T.R. 808. ca cited. Leach 2 ed. 2 Ld. R. 480. 5. St. 301.

By a variety of English statutes, however, almost every species of writing, is now made the subject of forgery. (4 & 5 Ed 6 c 4) &c. 1 Hawk 338.

Our Stat on the subject includes all private writings by the word "any other writing." Stat Con. 155.

If one makes a false will in the name of another the forgery is complete, tho the supposed testator is living. (Leach 103. 3 ed. 2 East. P.C. 983.

Not only actually making a false instrument, & subscribing another's name to it — & fraudulently altering one already made, is forgery; but many other acts are &c. (1 Hawk 338.

Ex: One employed to write a will for a sick man, fraudulently & inserts legacies not directed to be inserted. Here the name is not forged, nor is the writing altered — after being executed. (1 Hawk 338. 2 Bac 568. Mod 150. 304, Cro. Jac 320, 10 Co 76 b. 6 Co.

But if the will never was executed — Not forgery, for execution, because there would be no complete instrument. (2 Bac 567. 1 Co 100. 1 Hawk 338.) The writing does not purport to be a will.

Forgery.

In writing an obligation, release &c, ever one's name, found at the bottom of a letter &c. (1 Hawk 336. 2 Hawk 1 V. 2 Bac 587.) Here the name is not forged, but the instrument is, & making a mark in the name of another may be forgery. (Leach 516.) This being a mode of signing, by proxy, as cannot write

So, if one fraudulently inserts in an indictment the name of one, against whom it was not found. (1 Hawk 336. 3 Mod 95. 2 Bac 587. 8 Mod 142. 12 Mod 493. 494.) This is an "alteration", &c. amounting to forgery.

Fraudulently altering a deed, in a material part is forgery. (1 Hawk 336. 2 Bac 587. Mod 5. 9. 11 Geo 2. c. 4.) Ex: "Manor of B" for "manor of L". "£1000". for "£100." [3 Inst 169. contra, because not made in the name of another, than the true signer, & neither heard, nor is a counterfeit.] But it is directly within the definition. Secus, if the part is immaterial.

(Suppose the part immaterial, which is altered. not to in)

If one, having forma a bill of Exchange, forges an indorsement to get it discounted - it is forgery. (1 Hawk 230. n. 4 at E.L. 2 Ld Ray 1416.

One may be guilty of forgery by making a deed, in himself in his own name: Ex: one having given a deed of black-acre to A. afterwards grants the same to B. & antedates the last deed. This is false & fraudulent, & to the prejudice of A. (1 Hawk 336. Mod 66. 759. Noy 101. 2 Bac 566. (Dyer 288 pl 5

But se, who honestly writes an instrument in another's name, & signs & seals it for the latter (in his presence) & by his direction, is not guilty of forgery - It is the act of the latter, in Law. (1 Hawk 337.

But the making &c must be fraudulent. Ergo, if obligee changes the word "pounds" in to "pence"; not, in general, forgery. Perjury to himself only. (misdemeanor.) 1 Hawk 337. Noy 99. Mo 855. Cal 375. 2 Bac 587. 1 Roll 94. 2 Mo. A. 837.) But if the security is avoided by it. (1 Hawk 337. Ex 224. 11 Geo 2. c. 1 Roll 94.

Forgery

Yet, it is said, that even this alteration, if made with a view to gain an unjust advantage to himself - or to prejudice a third person, would be forgery. (1 Hawk 33). 2 Bac 507. Ex: Obligee bound to obligor in an obligation to a bona fide creditor of his own - makes the alteration, to defraud the creditor, by rendering the deed void.

Regularly, a non-feasance cannot amount to a forgery, tho' the intent be fraudulent. Ex: Omitting a legacy in a will &c - forgery being positive. But it is said, that if the omission of one bequest materially alters the limitation of another; it may be forgery. Ex: Omitting an estate for life to one, whereby the devise of an intended remainder to another is made to take effect, in presenti - for here the omission operates in favour of the latter as a positive devise beyond the life of the former. (1 Hawk 33). Mo 560. Noy 104.

Not necessary that one should be actually prejudiced - sufficient, that from the nature of the act, some one's right might be prejudiced. (2 Str Ray 1461. 6. Str 747. Bar 10. 2d Ray 737.) as where the obligation is never enforced. SS Sufficient to aver a general intent to defraud, without pointing out the particular mode. E.g. with intent to defraud A.B. sufficient. (Leach) 6.

Not necessary to forgery that the writing should be published. (2 Str Ray 1460. 1469. Str 747.) Punishable tho' the party keeps it in his desk; the intent being clear

SS Forging the name of a fictitious person may be felony. (Leach 88. 182. 216.)

Suppose an alteration in a point immaterial - by the obligee, regularly in unions to himself only - if by Stranger, a obligor, of no effect - (11 Co 27 a) Yet if by obligee, it might, in some cases, prejudice another* - Ex: another might have the beneficial interest.

* and in that case, it is forgery, I conclude.

12.

Variance.

Generally, the least variance, between the writing recited & that offered in evidence, is fatal. Leach 384. in ye indictm.

Yet, if a mistake in spelling don't alter the word to another; not fatal. Ex: "Undertook" for "undertook". But it is fatal, if it make the word insensible. Comyn - -

On a prosecution for forging a writing, "purporting" to be such an instrument - evt cannot be convicted - if it does not on its face - purport to be the instrument described. Doug 287. 302. 12 Mod 180. n. Leach 209.

As to the effect of the words "of same following" & as follows" that is to say" &c see 2 Hawk 466. 478. Comyn 227. 2 Hawk 1515. Str 231. 787. Salk 510. 3 Burns 1700. Doug 93. 113.

+as it is. In the indictment, the forged instrument must be set out in words & figures. 1 Ea 180. n. Doug 287. 302. Leach 209.

Punishments: at C.L. by fine, imprisonment, & pillory. By a variety of English Stat, now severely punished. in most cases with death. 4 Bl 247. 250. Post 110.

In Conn: ~~State-prison~~ Imprisonment in a gaol, St 184. 185. ~~for the first offence, not exceeding 3 years &c~~ - to pay double damages to the party injured - & to be incapable of giving evidence in any Court. St 6 184. 5.

Whether the person in whose name the forged instrument is, may testify against the prisoner: see Peake Ev 95. 110. 1 Mc. & M. 37. 80. 105. 117. 138. 9. 141. 4.

Under our Stat, the making &c of any writing is not forgery, unless it be "to prevent Equity & Justice". This does not seem to vary the offence, in substance, from what it is under the C.L. definition. St 184

Forgery.

The word "alter," not used in our Stat; but "altering a writing" is "making a false writing." The word is now inserted, 1821.

The form Law is to charge, with (mocking) a false deed &c when the act was altering.

Altering & publishing, as true, a forged instrument to prevent Equity &c, is punished under our Stat as forgery &c. Stat 1844. ~~vid Stat &c.~~ So, under y. Engl. 1 H/4 Bla. 248 Leach, 223.

Of Perjury.

It is the crime of "Swearing wilfully, absolutely, & falsely, in a matter material to the issue, or point in question, under a lawful oath, administered in some judicial proceeding." 4 Bl 137. 3 Inst 164. 1 Hawk 318. 3 Bac 814.

It must be a wilful false swearing. i.e. with some degree of deliberation: & this ought to appear clearly, not perjury if through surprize, mistake, or inadvertency. 1 Hawk 319. 3 Bac 814. 5 Mod 350. 12 Co 105. Salk 513. 3 Burr 1683. 4 Bl 137. 2 McN. 535.

The oath must be taken in some "judicial proceeding" i.e. in some Court, or before some officer, having authority to administer an oath; & in some proceeding relative to a civil suit, or criminal prosecution. 1 Hawk 319. 4 Bl 137. 6 T.R. 168. 9. My 128. 2 Roll 257. 1 Hob 6 2. 3 Bac 814

Immaterial whether the Court is of record, or not. 2 McN. 470. Leach 433. 2 Bac 1189. ex: Chancery, Ecclesiastical Ct in Eng, or any other lawful court. 1 Hawk 319. 6 T.R. 467. 185. 609. 5 Mod 348. 1 Roll 41. 2 Bl 257. 12 Co 104. 6 J 12. 3 Bac 814.

Any voluntary, or extra-judicial oath, not within the law.

Perjury.

4 Bl 137. 1 Haw 320. 1. — Ex: an oath before a magistate on making a bargain, that the property is the Vendors &c 1 Vent 369. 70. Con — 2 Roll 257. Yelv 72. 3 Inst 166.

Also perjury may be assigned on an affidavit or depositions, tho' the affidavit &c is never in any way, used. 1 T. R. 315. P.
The offence is complete, by taking the oath.

Perjury is confined to such public oaths, as affirm, or deny, some matter of fact:— not predicable of promissory oaths — oaths of office. 1 Haw 320. 1. 2 Roll 257. 3 Inst 165. 3 Bac 814.
(But the violation of the latter may be a misdemeanor) (1 Haw 321. 4 Com 14.) Ex: oath of a juror, or judge, or of an executive, or ministerial officer.

But perjury is predicable of any false oath — material to the point in question, in judicial proceedings, tho' not affecting the princi= =pal judgment — Ex: Respecting the ability of one offered as bail &c. or upon any interlocutory question. 1 Haw 320. Ca. t. 140.

A party, when allowed his own oath in judicial proceedings may commit perjury, as well as an indifferent witness. 1 Ex. 15 Eliz in his answer in chancery. (Cro 259. 2 Mc. St 476.)=
Eng. Statute. affidavits in Eng. on collateral points in courts of Law — Book debt in Com: &c. 1 Haw 322. Roll 70. 3 Bac 815. 4 Com 145.)

If a deft in Chancery, having given a false statement explains it, (upon cross-interrogatories taken) in his second answer, consistently with the truth of facts — he is not guilty — mistake presumed. 1 Sid 418. 2 Keb 515. 2 Mc. St. 474

But a juror who violates his oath, in his finding, is not guilty of perjury — for he is not sworn to testify the truth — but his oath is promissory — Supra —

Perjury

Shall not necessarily to be material, whether the matter sworn to be true or not, in fact: if the witness swears that he knows what he does not know to be true, he is perjured. So he is to swear to those facts only which are within his knowledge. 1 Haw 322. 3 Salk 294. 2 Roll 77. 3 Ins 166. 3 Mod 226. 5 T. R. 53. 4 Com 147.

'Tis true he swears absolutely, to what is not true, but believing it true: Guilty of perjury & subornation.

The swearing, if it be said, must be absolute & direct - swearing under such qualifications as "I think", or "I believe", or, "according to my recollection" cannot, it has been said, be perjury. (1 Haw 322. 3. 3 Ins 166. 3 Bac 815. 4 Com 14). Qu: if the witness does not think so & (Comp 229.) for it has the weight of common testimony & may not the law be thus evaded?

It is perjury. Leach 301. 2 East R 885. 1 M & S 262. 3.

The swearing must be to a "material point." Impertinent, idle testimony, cannot be perjury. 1 Haw 322. 4. 3 Bac 815. 1 Hale 274. 4 Com 147. Hob 53. Sal 14. Co L 500. 1 Roll 8. 141. Bulley 258. & Mod 345. 348. Ex in daily experience - The Ex was, whether A was coupled, or not; - the witness gives a history of a journey to Lee - & misrepresents some of the incidents of the journey.

But if the false evidence, tho' circumstantial, & not directly applying to the issue, tends to aggravate, or extenuate damages: it may be perjury. 1 Haw 323. 325. Lee 2 Ld Raym 1562. 2 Show 98. 3 Bac 815.
It goes to one point in question, & is material to that point - viz. the point of damages.

So it is said - if the immaterial & false part of the evidence is likely to induce the jury to give a more ready credit to the substantial part. (1 Haw 323. 4. Salk 283. 2 Raym 858. 2 Salk 513. This point not well settled - 1 Haw 324.) Ex: falsely swearing to certain artificial or natural marks, about stolen property - false & impressing good will to the party against whom he swears.

Perjury.

Swearing that one beat another with a pond - when the truth was with a staff - not sufficiently material to constitute perjury - 1 Haw 325. 46 in 14. the beating only material.

Qu: may not the kind of instrument tend to aggravate, &c ?

Need not appear in what degree the false evidence was material; sufficient if it be circumstantially so: must less necessary that the evidence be decisive of the issue (1 Haw 325 n. 2d Ray 288. 889.) for it may be very material & yet not sufficient to govern the finding -

Always incumbent on the prosecutor to prove the evidence material. (1 Haw 325 n. bis. 1 Bl. 394. p. 365.)

The posture of a former issue is good evidence that a trial was had, so as to introduce evidence of what was sworn. (2 H. N 408. 535.

But the cause, in which, perjury was committed, must be set forth. 1 Bl. N 283. Ray 170. [View for office copies of an affidavit &c on which the perjury is assigned, is evidence, &c: 2 H. N 408 &c.]

Not necessary that the false evidence should have been credited by the Jury - nor of course that any person should have been actually injured. The crime does not consist in a damage done to an individual; but in abusing public Justice. 1 Haw 325. 2 Leon 211. 3 Bl 230. 3 Bac 815.

The word "wilful" is not necessary in the indictment at bar. (Leach 69.) (Sems, under our Statute, Semble - 2 Ld. N.C. 339.)
"Falsely maliciously &c" sufficient.

To convict of perjury 2 witnesses at least are necessary. Sems, there is oath against oath. 1 Haw 325 n. 10 Mod. 195. O. B. 1784. p. 812. 1 Ld N 37. 2 Bl 695.

(View for circumstantial evidence of the fact of the deft having given evidence is good. Qu. 2 L. N. 4 & 4)

Perjury

Holden in Eng^d that the person injured by the perjury, could not testify against the offender in a Public prosecution (1 Haw 325. M^c Nay 395 &c. Fairchild vs Beach. 6^t of E. 1804. 1 Tr 103. 1 Wm 122 g. 1 T.R. 298. 1 Vent 49. 3 T.R 2 g. 308. 7 T.R. 60. 4 Bl 20. 587. 4 Burr 2253.)

Decisions contradictory.

Interest in the question &c. (Peake in 95. 105. 1 M.N.P. 1054. 1 g. 138. 9. 141. 4.) It seems Lex, now competent. (Peak Ex 146. 8. w. 4 East 587.) So held, also, in this State.

Two persons cannot be joined in a prosecution for perjury: the offence not joint. (2 Ex 623. 8 g. 921. 4 Burr 2482. Barnard 25. Cowp 794. B. N.P. 5. 5 T.R. 98.) Sems, of subornation infra (2 Ld Ray 885.

Subornation of Perjury, is the offence of procuring another to commit perjury - but the perjury must be actually committed - Seems, no Subornation. (1 Haw 325. 6. 432. 3 g. 8. 1 Roll 41. 5 g. 79. Jeh 72. 3 Mod 122. 62 J. 88. 2 Ld. N. 63.

Perjury & subornation of perjury punished at C.L. variously; anciently with death, afterwards banishment, or cutting out the tongue, then forfeiture of goods - now fine & imprisonment, & inability to give evidence. (4 Bl. 138. 3 Ins 163.) Other penalties superadded by Statute. (5 El. 4. 2 g. 2.

Inciting one to commit perjury, (if not being actually committed), is punished at C.L. by fine & infamous corporal punishment. (1 Haw 325. 6.) It is a misdemeanor.

It is a consequence of a conviction of perjury at C.L. that the offender can never be a witness. (See 1. H. Pl. C. 2 g. 8. 3 Bl. 563.

Appearance in the indictment by the omission, or addition of a letter, is not material, unless it makes another word. ex. "Understood" for "Understood": seems, if it does. Ex "air,"

Perjury

for "Lein". Comb 229. 5 R. 237. Salk 680. 2 Hawk 234. Bac Abr 7 Str 784. Black 137, 146. when assigned on an affidavit &c. (2 M. N. 511. 513), i.e. a written oath.

St. C. 154. [Under pain of ~~forfeiture of his~~ ~~imprisonment (with~~ State Prison ~~hard labour)~~ ~~and~~ ~~to be~~ ~~incapable to serve on any jury, & a~~ ~~forever~~] by forfeiture of 8£ to party aggrieved & State, equally – State-prison 6 mo. – & disability to be sworn in any court of record."

~~Supreme Ct to take an oath in any Court of Record~~

[~~Be open~~ ~~infamy~~ & con. the perjurer, to be set in the pillory one hour, with ~~the~~ ears nailed. St 33, 34, c. 1850.]

Con. stat mention, perjury in a ~~Court~~ "Court of record" only.

But in civil a court of Record or not of record is punishable at Common L.L. by fine, imprisonment & disability to give evidence: but the imprisonment is not C. L. not in Newgate.

False affirmation by Quakers in Court, punished as perjury. Stat 345.

By Stat of Conn of one "receiving by false pretences, privily & by purpose to take away" any man's life, he shall be, not to death. c. 182. see murder &c (St. Com. 157.)

Criminal Jurisdiction of Courts in Com.

Supreme Court of all offences punished with death, loss of limb. & then any such punishment due & scourging & banishment also of adultery – exclusive jurisdiction. Stat 127. 30.

Also of Larceny – not strictly criminal – Stat 127.

Also exclusive jurisdiction for all crimes punished by confinement in New-Gate – except that of knowingly receiving of which it has concurrent jurisdiction with Court of Com. Pleas. st. L. 129. 130. 186.

Criminal Jurisdiction of Courts in Connt=
Of Pleas, concurrent County Courts. Stat. 6. 30.

It has also jurisdiction of high crimes & misdemeanors but not exclusive - only concurrent with County Courts -

Ec, exclusive jurisdiction of blasphemy - (whipping - pillory - binding to good behaviour) So, of atheism, polytheism, deism, Unitarianism. Stat 18. Wm 95.

Of crimes inferior to the above (ex. to those punished with death, & with Newgate - but beyond the jurisdictions of a Justice &c) the County Courts have, in general, exclusive jurisdiction. St 129. ex: Supra. In case of riots & misdemeanors. 1 Wm 101.

No appeal from County Courts to Supreme in criminal cases, nor in qui tam prosecutions. 1 Wm 96. Dirk 267.

Justices &c have cognizance, originally, exclusively of all crimes, of which the punishment does not exceed the penalty of $7 - St 142. So, of theft; if the value of the goods does not ex= =ceed $10 - tho' if the value of the goods be $9.34. whipping is superadded - but if the value exceed $10 - he has no jurisdic= =tion. Stat 413. 414.

Of breaches of the Peace, Justices have cognizance unless aggravated &c in which case the offender is bound over to the county Court as meriting a higher fine that the Justices &c can inflict. St 336.). In the latter case he has no jurisdiction for the purpose of punishing, but merely as a court of Inquiry -

Justices &c act as Courts of Inquiry in all criminal cases above their own jurisdiction; & bind over & commit for trial. &c. Stat 142. 1 Wm 106.

An appeal lies from the judgment of a Justice &c, to County Court in all criminal cases excepting, for the offence

8 D.

Criminal Jurisdiction of Courts in Cases of drunkenness, profane swearing, cursing, sabbath breaking, selling lottery tickets granted by another State, & some others. 1 Bac 142. 285. 370. 155. 195.

In criminal cases a Justices' jurisdiction is not confined to the town in which he dwells - he may hold plea in any other town in the same County. 2 Root 357.

Offences are tried here as in Eng only in that County in which they were committed. We have no Statute on the subject. 1 D. P 395. Kirb 401. 2 Dong 760. 8 Mod 328. Kel 79. 80. 2 Ld R 503. 651.

This rule holds in Cases only as to criminal prosecutions - not as to actions Qui tam. Kirb 401

Of Bail in Criminal Cases.

When one is arrested for a crime, & brot before a magistrate, (on charge of a crime not cognizable by him) the latter is to inquire into the facts charged, to discover whether he ought to be holden for Trial or not. 1 Bl 296. 2 Hu 389. 394. 1 Ch 142. 420.

But he has no right to examine the prisoner at L. & therefore none here - we having no Statute to warrant it. In Eng it is authorized by 2 & 3 P & M. 4 Bl 287. 296. 2 Hu 390.

If on inquiry it appears clearly, that the offence charged has not been committed - or, that the charge against the prisoner is wholly groundless, he is to be discharged. 4 Bl 296. 2 Hu 389.

Seems he must be committed to prison, to be kept for Trial, or, if the offence is bailable, give bail for his appearance - i.e furnish security for his appearance. 4 Bl 296. 1 Ch 142. 2 Hu 390.

Bail in criminal cases.

Bailing, is delivering one to his sureties, on their giving security &c.

1st. Regularly, for all offences below felony, (whether by C.L. or Stat.) the offender ought to be bailed. 4 B. 297. 2 Hale 127. unless it be prohibited by Stat.

2d. At C.L. (according to Blakst.) all felonies now bailable, even treason & murder: according to others, all offences, except homicide. 4 Bl 298. 2 Ins 189. 1 Chm 101. 1 Hal 97. 1 Bac 220. so that the accused was admitted to bail, in almost every case at any rate.

3d. But the Stat Westm 1. 3 Ed 1. denies bail in treason & many felonies: & further provisions are made on the subject by Stats 23 H 8. & 1 & 2 P & M. (4 Bl 298.) Ex: In any case of felony when the party has confessed, or is notoriously guilty. so, in treason, murder, &c, accused not now bailable, in Eng.

But the Eng. Stats taking away the power of bailing in certain cases, do not extend to B.R. in Eng. This Court, or any one of the Judges of it, in vacation, may now bail for any crime, even murder or treason. Rel 90. 4 Bl 298. 1 Bac 219. 223. 2 Ins 189. Hal 105. Str 911. 1242. 2 Haw 175. 8. 6 Cop 383. 4 Bur 2179. They extend only to subordinate, or common bailing Officers, as Sheriffs & Justices.

But the Court of B.R. will not admit to bail, in those cases in which bail is prohibited by Stat, unless under special circumstances in the party's favour, viz: Where the prosecutor has unreasonably delayed the Trial: where the evidence appears very weak: where the prisoner's life is in danger from confinement, &c. Stark 122. 2 Haw 157. 175. 6. 5 Mod 75. 2. 5. Salk 558. 9. Ld 98. 10 Mod 334. Str 949. 543. Holt 85. But in case of illness, it must arise from confinement. 1 Bac 223. 4 Cop 333.

Bail in criminal cases.

In prosecutions for offences amounting to misdemeanors at C. L., defts may appear by attorney. 1 Chit. N. 59. 4 Bac. 52.

After Verdict however against the Deft he is not admitted to bail, unless prosecutr consents. 1 East 159.
(This rule has often been dispensed with in Comm. pl. 1 Chit. N. 59.

In Comm. all crimes are bailable, except capital, & contempts in open court. St 22. 420. 2 Hw. 394.

Our State explained not to take from the Supreme Court the power of bailing, even in capital crimes: any more than State Ct. might take it from U. S. Supreme Court, supposed to have the same powers as U. K.
(This indeed is expressly allowed by our Stat in treason.)
Stat 420.

It is a gen. rule, that he who is Judge of the office, may bail the accused, ex officio, at C. L. 2 H. P. C. 120. 5. 2 Hawk 93. for 148 octavo.

The officer, who arrests the person in Comm. cannot take bail in criminal cases. This is done by the magistrate, who acts as a Court of Enquiry. After commitment for want of bail, the Sheriff may take such bail as the Court of Enquiry has prescribed. (Dickinson v Ringsbury. Court of Errors 1805.)

Taken to the treasurer of the State, County, or Town, according to the jurisdiction: i.e. as triable in the Superior Ct, County Ct, or by a Justice.

By Comm. L. If a magistrate &c, takes insufficient bail,

Bail in criminal cases

& the principal does not appear; magistrate is finable. 4 Bl 297. 1 Bac 227. 2 Hawk 142.

In Eng^d 2 sureties are generally required in case of felony; two for inferior offences. 2 Hawk 141. n. 1 Com 473. See 2 Stat 125. 10 Co 101.

Not more than two required here, I believe, in any case.

Refusing bail, where it ought to be granted, is a misdemeanor in the Justice of Sheriff at C. L.: as such punishable by fine & amercement.

The party injured has also his action. 1 Com 473. 2 Hawk 143. 1 Bac 228. 1 Salk Mod 179.

Granting bail, when not grantable, is punishable at C. L. as a negligent escape, by fine.

It is also punished by penal Eng Statt. 2 Hawk 142. 206. 1 Hal 596. 1 Com 473. 4 Inst 179.

It has been decided in Conn. in a prosecution for Perjury, (the def^t being out on bail) that the verdict could not be recorded, unless he is present in Court. 1 Root 76. Has not the practice been often different? 1 Am. L. 59. 4 Dall 375. 1 Bac 185. Is his presence ever necessary, except on indictment for felony?

If a prisoner prosecuted for a given offence is acquitted, but proved on the trial to be guilty of another; the Court may detain him, to be prosecuted for the latter. Leach 300. 335.

Of Costs in criminal cases.

By our Stat a person charged with, & tried for any crime, be acquitted pays the costs: if the prosecution was occasioned by any unlawful or blameable conduct of his. Sc 143.4.

If not thus occasioned, he is dismissed without costs & then it is paid according to the old law out of the treasury into which the fine would have gone, if he had been fined. and in general, fines inflicted by the Supreme Court go to the State Treasury &c.

Now by Stat 1792. Cost arising on Public prosecutions in the Courts of Comm. pleas, are paid by the State Treasury;- Costs on trials before a single magistrate are still paid out of the Town Treasury.

When costs arise in any criminal proceeding, in which there is no acquittal or conviction (Ex: person cannot be apprehended, or being apprehended escapes without the officers fault before he is committed.) State pays:- if the criminal was cognizable by the Supreme Court &c-
Does the new Stat apply in this case?

If the person charged & tried is liable to pay costs - but unable as having not property sufficient, bound out in service to any inhabitant of this state - or of the U. S.

But where it cannot be thus obtained - payable out of the State Treasury if tried by Supreme or County Court.

Costs in criminal cases.

When the evidence before the Court of Inquiry is not sufficient to hold the accused to trial, costs cannot be taxed against him. Vol. 386.

In Eng^d, no costs are paid in either side when the crown prosecutes except in particular cases by special provision of the legislature. 7 T.R. 367; Hall^k 2d. 125.